



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: October 11, 2019
MOAHR Docket No.: 19-009926
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

HEARING DECISION

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 42 CFR 438.400 to 438.424; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, a three-way telephone hearing was held on October 9, 2019, initiated from Lansing, Michigan.

Petitioner personally appeared and testified unrepresented.

The Department of Health and Human Services (Department or Respondent) was represented by a recoupment specialist, Julie Barr. Barbara Schram, FIM appeared as a witness for the Department.

Department Exhibit A.49 was offered and admitted into the record.

ISSUE

Did the Department properly propose to recoup Food Assistance Program (FAP) benefits?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On August 20, 2019, Respondent issued a Notice of Overissuance to Petitioner stating that the Department determined that Petitioner was overissued \$668.00 in FAP benefits during the period of November 1, 2015 to January 31, 2016.
2. On August 30, 2019, Petitioner filed a hearing request.

3. The Department did not have relevant or credible evidence of an overissuance.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. The Department (formerly known as the Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

Overissuance issues are found at 7 CFR 273.16 and .18. Corresponding policy is found at BAM 700, 705, 710 and 725.

In this case, the individual who prepared the evidentiary packet was not available for the administrative hearing. In his stead, Julie Barr, also a recoupment specialist, appeared. It appeared from the evidentiary packet that the Department's position is that Petitioner was a simplified reporter during the alleged overissuance period. As such, Petitioner was required to report any income that exceeded \$2,584.00. During this time, Petitioner submitted proof of income of paycheck stubs for August 28 through September 18, 2015. The Department alleges that beginning in September 2015 a member of the FAP group exceeded the S/R for a group of four through January of 2016 resulting in an overissuance of \$668.00. The Department's evidence to support this claim is data from "The Work Number", Exhibits A.17, 18, and 19. Page 17 indicates that the member of Petitioner's group was paid biweekly. That page is identified as 1 of 1. Pages 18 and 19 contain pay information for an unknown individual, who was paid weekly. Page A.18 and 19 contain no information as to whose wages are itemized, no name, no social security number, no name of any employer(s). The recoupment specialist on her own motion pointed out that the information on Page 18 is peculiar in that it reports an individual worked usual number of hours for weekly work weeks, including for example the September 25, 2018, period for 117 hours. Petitioner credibly testified that the group member was paid biweekly.

After a careful review of the credible and substantial evidence of record, the undersigned does not find the evidence proposed by the Department to be credible of an overissuance, whether by client or agency error. The recoupment specialist on her own motion pointed out the discrepancy and could not explain the inconsistencies. Pay information on Exhibit A.18 and 19 has no information to tie to any member of Petitioner's FAP group; the wage evidence could credibly be identified as wages

attributed to any member of Petitioner's FAP group. As such, the Department has not met its burden, and thus, the proposed recoupment cannot be upheld.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with Department policy and federal law when it proposed a FAP recoupment of Petitioner's FAP benefits during the period from November 1, 2015 to January 31, 2016.

DECISION AND ORDER

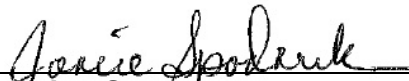
Accordingly, the Department's decision is **REVERSED**.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Remove the Notice of FAP Overissuance against Petitioner from the State's data systems for the period of November 1, 2015 to January 31, 2016; and
2. Remove any FAP recoupment determination in any of the State of Michigan data systems with regard to Petitioner for the November 1, 2015 to January 31, 2016, time period.

IT IS SO ORDERED.

JS/hb



Janice Spodarek
Administrative Law Judge
for Robert Gordon, Director
Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

Barbara Schram - 35
2145 East Huron Road
East Tawas, MI 48730

DHHS Department Rep.

MDHHS-Recoupment
235 S Grand Ave
Suite 1011
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Iosco County, DHHS

BSC1 via electronic mail

M. Holden via electronic mail

D. Sweeney via electronic mail

Petitioner

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[REDACTED], MI [REDACTED]