



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]

Date Mailed: July 26, 2019  
MOAHR Docket No.: 19-006673  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: John Markey**

**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 telephone hearing was held on July 24, 2019, from Detroit, Michigan. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Susan Laws, Office Supervisor, and Jody Anderson, Recoupment Specialist. During the hearing, a 53-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-53.

**ISSUE**

Did Petitioner receive an overissuance of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?

**FINDINGS OF FACT**

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

1. Petitioner was an ongoing recipient of FAP benefits from the Department.
2. On April 11, 2018 and April 25, 2018, the Department issued to Petitioner a Notice of Case Action informing Petitioner that her application for FAP benefits was approved and was based on Petitioner having an income of \$0. Each Notice of Case Action included clear and unambiguous instructions to Petitioner to report any change in income within ten days of receiving her first paycheck and that failure to do so could result in fraud charges being brought against her.

Additionally, each Notice of Case Action was accompanied by a document titled Change Report that could be used to make such a report. Exhibit A, pp. 26-39.

3. On October 19, 2018, Petitioner received her first paycheck from her new job with US Staffing. Petitioner averaged full-time hours through at least the March 2019. Exhibit A, pp. 18-22.
4. Petitioner never reported the new income to the Department and continued to receive the maximum amount of FAP benefits for her group size despite having substantial income.
5. On June 14, 2019, the Department issued to Petitioner a Notice of Overissuance informing Petitioner that the Department believed it had overissued to Petitioner \$753 in FAP benefits from December 1, 2018 through March 31, 2019 on account of Petitioner's error in failing to report the increase in income. Exhibit A, pp. 2-6.
6. On [REDACTED], 2019, Petitioner submitted to the Department a request for hearing objecting to the Department's June 14, 2019 notice.

### **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.

In this case, the Department alleges that Petitioner received a \$753 overissuance of FAP benefits from December 1, 2018 through March 31, 2019 as a result of Petitioner's failure to report her increase in income that began in October 2018. Petitioner objects to the Department's attempt to establish and collect the alleged overissuance despite acknowledging that she never reported the income and that the income figures used by the Department in calculating the overissuance amount were correct.

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. BAM 700 (January 2018), p. 1. A client error occurs when the client received more benefits than appropriate because the client gave incorrect or incomplete information to the Department. BAM 700, p. 7. An agency error is caused by incorrect action by the Department staff or Department processes. BAM 700, p. 5. The amount of the overissuance is the benefit amount the group actually

received minus the amount the group was eligible to receive. BAM 700, p. 1. If improper budgeting of income caused the overissuance, the Department will use actual income for the past overissuance month for that income source when determining the correct benefit amount. BAM 705 (January 2016), p. 8. For client error overissuances due, at least in part, to failure to report earnings, the Department does not allow the 20 percent earned income deduction on the unreported earnings. BAM 720 (October 2017), p. 8. Regardless of whether the overissuance was caused by client error or agency error, the Department must attempt to establish any alleged overissuance over \$250. BAM 700, p. 5; BAM 715 (October 2017), p. 7.

From December 1, 2018 through March 31, 2019, the Department issued to Petitioner monthly FAP benefits of \$192. In determining Petitioner's monthly FAP amount for that time period, the Department did not budget the monthly substantial concealed income that Petitioner failed to report to the Department. When that income was added into the budget, it was determined that Petitioner was overissued \$753 in FAP benefits during that time period.

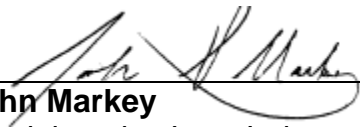
After reviewing the record, the Department has met its burden of proving that Petitioner received a \$753 overissuance of FAP benefits from December 1, 2018 through March 31, 2019 on account of the Petitioner's concealment of her increase in income. Petitioner's objection to the Department's actions in this case amount to equitable arguments. Unfortunately, the undersigned Administrative Law Judge does not have any equitable powers and must follow the law and Department policy, which compels the Department to seek to establish overissuances when it overissues FAP benefits to a client.

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 acted in accordance with Department policy when it determined that Petitioner received a \$753 Client Error overissuance of FAP benefits from December 1, 2018 through March 31, 2019. The Department is entitled to initiate recoupment and/or collection activities for the overissuance, less any amounts already recouped and/or collected, pursuant to the law and Department policy.

### **DECISION AND ORDER**

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

JM/cg

  
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**John Markey**  
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

**Via Email:**

MDHHS-Calhoun-21-Hearings  
MDHHS-Recoupment Hearings  
M. Holden  
D. Sweeney  
BSC3- Hearing Decisions  
MOAHR

**Petitioner – Via First-Class Mail:**

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