



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: August 9, 2019  
MOAHR Docket No.: 19-006906  
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 31, 2019, from Detroit, Michigan. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Rebecca Webber, Recoupment Specialist, and Jill Volmering, Family Independence Specialist. During the hearing, a 141-page packet of documents was offered and admitted as Exhibit A, pp. 1-141.

**ISSUE**

Did Petitioner receive a \$1,802 client error overissuance of Food Assistance Program (FAP) benefits from November 1, 2012 through July 31, 2013 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 in a group that included herself and her husband [REDACTED], amongst others.
2. In 2005, [REDACTED] was convicted of a drug related felony in Macomb County. In 2007, [REDACTED] was convicted of a drug related felony in Tuscola County. Exhibit A, pp. 130-140.

3. On applications for assistance submitted to the Department in 2012 and 2013, Petitioner was asked whether [REDACTED] had any drug related felonies since 1996. On both submissions, Petitioner incorrectly informed the Department that [REDACTED] did not have any such convictions. Petitioner signed the applications, certifying that the information was true to the best of her knowledge and acknowledged her rights and responsibilities under the program, including the responsibility to repay any FAP benefits wrongfully issued to due providing incorrect information. Exhibit A, pp. 61-129.
4. From November 1, 2012 through July 31, 2013, the Department issued to Petitioner \$2,109 in FAP benefits. The Department believes that Petitioner was only entitled to \$307 in FAP benefits during that time. Exhibit A, pp. 17-35.
5. After reviewing Petitioner's case, a Department worker forwarded the matter to a recoupment specialist via an Overissuance Referral, Form 4701, on April 30, 2018. Exhibit A, p. 141.
6. On June 4, 2019, the Department issued to Petitioner a Notice of Overissuance informing Petitioner that the Department believed it had overissued to Petitioner \$1,802 in FAP benefits from November 1, 2012 through July 31, 2013 on account of Petitioner's error in repeatedly misreporting [REDACTED] criminal history on applications. Exhibit A, pp. 3-7.
7. On [REDACTED], 2019, Petitioner submitted to the Department a request for hearing objecting to the Department's June 4, 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 \$1,802 overissuance of FAP benefits from November 1, 2012 through July 31, 2013 as a result of Petitioner's failure repeated misrepresentations regarding the criminal history of her husband and group member, [REDACTED]. Petitioner objects to the Department's attempt to establish and collect the alleged overissuance.

An individual who has been convicted of two or more felony drug offenses which occurred after August 22, 1996, is permanently disqualified from receiving FAP benefits. BEM 203 (October 2012), p. 2; 7 CFR 273.1(b)(7)(vii). Because David had two drug related felony convictions during the entire time period relevant to this matter, any benefits issued on his behalf were necessarily improperly issued. David should have never been included in the FAP group with Petitioner. His inclusion was caused by Petitioner's misrepresentations and resulted in Petitioner's FAP allotment being calculated based on an improperly inflated household size.

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. BAM 700 (December 2011), 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 (July 2012), p. 6. 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 (August 2012), 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 \$125. BAM 700, p. 5; BAM 715 (July 2012), p. 5.

From November 2012 through July 31, 2013, the Department issued to Petitioner monthly FAP benefits that were based on [REDACTED] inclusion in the household. As [REDACTED] was at all times relevant disqualified from receiving FAP benefits due to his criminal history, Petitioner's monthly FAP allotments were necessarily inflated. When [REDACTED] is removed from the group and the budgets are recalculated, it shows that Petitioner was overissued \$1,802 in FAP benefits from November 1, 2012 through July 31, 2013.

After reviewing the record, the Department has met its burden of proving that Petitioner received a \$1,802 overissuance of FAP benefits from November 1, 2012 through July 31, 2013 on account of the Petitioner's concealment of [REDACTED] criminal history. 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 \$1,802 Client Error overissuance of FAP benefits from November 1, 2012 through July 31, 2013. 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-Huron-Hearings  
MDHHS-Recoupment-Hearings  
M. Holden  
D. Sweeney  
BSC2- Hearing Decisions  
MOAHR

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

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