



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
MI [REDACTED]

Date Mailed: December 13, 2019  
MOAHR Docket No.: 19-012000  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Kevin Scully**

### **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; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a telephone hearing was held on December 4, 2019, from Lansing, Michigan. Petitioner represented herself. The Department of Health and Human Services was represented by Darcus Braswell and Thomas Byrd.

### **ISSUE**

Did the Department of Health and Human Services (Department) properly determine that Petitioner received an overissuance of 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. Petitioner started employment on November 30, 2018, and received earned income from December 19, 2018, through August 14, 2019. Exhibit A, pp 26-27.
2. On [REDACTED], the Department received Petitioner's application for State Emergency Relief (SER) assistance. Exhibit A, pp 28-36.
3. Petitioner reported on his [REDACTED] application for assistance that he was employed. Exhibit A, p 32.
4. On September 11, 2019, the Department sent Petitioner a Notice of Overissuance (DHS-4358) instructing him that he had received a \$1,872 overissuance of Food Assistance Program (FAP) benefits due to unreported earnings. Exhibit A, pp 4-9.

5. On September 19, 2019, the Department received Petitioner's request for a hearing. Exhibit A, p 48.

### **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.

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. Department of Human Services Bridges Administrative Manual (BAM) 700 (October 1, 2018), p 1.

For client error overissuances due, at least in part, to failure to report earnings, do not allow the 20 percent earned income deduction on the unreported earnings. Department of Health and Human Services Bridges Administrative Manual (BAM) 715 (October 1, 2017), p 8.

Petitioner was an ongoing FAP recipient when he started employment on November 30, 2018. This employment was reported on an application form dated January 3, 2019. It is not clear whether the amount of income Petitioner was receiving was verified, but the fact that Petitioner was receiving earned income from employment was available to the Department as of January 3, 2019. Therefore, as of February 1, 2019, Petitioner is entitled to the 20% earned income deduction, which was not applied towards the determination of the overissuance amount.

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 when it determined the overissuance of Food Assistance Program (FAP) benefits.

**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:

The Department is ORDERED to delete the overissuance and cease any recoupment action.

KS/hb

  
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**Kevin Scully**  
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**

Courtney Jenkins  
22 Center Street  
Ypsilanti, MI 48198

**DHHS Department Rep.**

MDHHS-Recoupment  
235 S Grand Ave  
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Washtenaw County, DHHS

BSC4 via electronic mail

M. Holden via electronic mail

D. Sweeney via electronic mail

MDHHS-OIG via electronic mail

**Petitioner**

[REDACTED]  
MI [REDACTED]