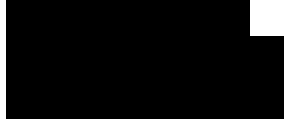




GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR



Date Mailed: February 28, 2020  
MOAHR Docket No.: 20-000761  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Ellen McLemore**

### **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 February 26, 2020, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Lounn Bexton, Eligibility Specialist; Tanya McCroy, Supervisor; and April Ketner, Recoupment Specialist.

### **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 FAP recipient for the period of July 1, 2018 through June 30, 2019 (Exhibit A, pp. 43-44).
2. On July 10, 2018, Petitioner submitted an application for FAP benefits (Exhibit A, pp. 9-14).
3. Petitioner's household consisted of herself and her son.
4. Petitioner's son had unearned income in the form of Supplemental Security Income (SSI) benefits (Exhibit A, pp.76-78).

5. Petitioner had unearned income in the form of spousal support in the monthly amount of \$324 (Exhibit A, p. 32).
6. Petitioner had unearned income in the form of child support in the monthly amount of \$850 (Exhibit A, pp. 30-31).
7. On May 7, 2019, Petitioner completed a redetermination related to her FAP benefit case (Exhibit A, pp. 21-25).
8. On May 30, 2019, the Department sent Petitioner a Verification Checklist (VCL) request verification of Petitioner's checking account (Exhibit A, pp. 24-25).
9. On June 24, 2019, Petitioner submitted verification of her checking account (Exhibit A, pp. 26-27).
10. On January 14, 2020, the Department sent Petitioner a Notice of Overissuance stating Petitioner had been overissued FAP benefits in the amount of \$3,696 during the period of July 1, 2018 through June 30, 2019 (Exhibit A, pp. 70-75).
11. On [REDACTED], 2020, Petitioner submitted a request for hearing disputing the Department's actions.

### **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, Petitioner submitted an application for FAP benefits on July 10, 2018. Petitioner reported that her household income included her son's SSI and her spousal support in the monthly amount of \$324. Petitioner did not report that she was receiving child support income from her child's father. On May 7, 2019, Petitioner completed a redetermination related to her FAP benefit case. Petitioner submitted verification of her checking account related to the redetermination. The Department discovered a deposit in the amount of \$850 into Petitioner's checking account. Petitioner stated that she receives \$850 per month from her child's father for their child's needs. Petitioner's child was over the age of 18, and as a result, he was not receiving court ordered child support. However, Petitioner and her child's father came to an agreement that he would

pay her \$850 per month for continuing support, as their child had special needs. Petitioner provided documentation showing that she began receiving the support on June 2, 2016. The Department testified that due to Petitioner's failure to report the income, it was not budgeted, and Petitioner received an overissuance in FAP benefits during the period of July 1, 2018 through June 30, 2019, due to client error.

When a client group receives more benefits that it is entitled to receive, the Department must attempt to recoup the overissuance. BAM 700 (October 2018), p. 1. A client error occurs when the client received more benefits than they were entitled to because the client gave incorrect or incomplete information to the Department. BAM 700, p. 6. An agency error is caused by incorrect action by the Department staff or Department processes. BAM 700, p. 4. The amount of the overissuance is the benefit amount the group actually received minus the amount the group was eligible to receive. BAM 705 (October 2018), p. 6. 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, 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. 10.

All countable earned and unearned income available to the client must be considered in determining a client's eligibility for program benefits. Child support payments, including arrearage payments, received by a custodial party for an adult child or a child no longer living in the home, are considered the other unearned income of the payee if the money is not forwarded to the adult child or child. BEM 503 (October 2019), p. 6. If the money is forwarded to the adult child or child, it is the other unearned income of the adult child or child. BEM 503, p. 6.

In support of its contention that Petitioner was overissued benefits, the Department presented FAP overissuance budgets for the period of July 1, 2018 through June 30, 2019 (Exhibit A, pp. 45-69). The Department calculated the benefits Petitioner should have received each month during the overissuance period based on the addition of Petitioner's unreported income. The Department received verification of Petitioner's income from Petitioner's child's father which showed Petitioner received \$850 per month during the entire overissuance period (Exhibit A, pp. 30-31). The Department also presented Petitioner's FAP Benefit Summary Inquiry (Exhibit A, pp. 43-44). The Benefit Summary Inquiry shows Petitioner was issued FAP benefits in the amount of \$3,876 during the period of July 1, 2018 through June 30, 2019. The overissuance budgets show Petitioner was only entitled to \$180 in FAP benefits during that time period with the inclusion of the \$850 in child support.

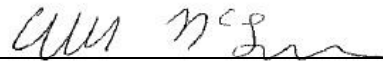
Petitioner testified that she did not report the income because she did not consider it to be income. Petitioner stated the funds provided by her child's father were to support her child's various therapies. Petitioner stated she did not understand that she had to report the income.

The Department presented sufficient evidence to establish that Petitioner had been overissued FAP benefits as a result of client error. Per policy, the income should have been included in the group's FAP budget. Although Petitioner may not have intentionally concealed the information to improperly receive benefits, the error was a result of her failure to properly report the income. As such, the Department established that it was entitled to recoup overissued FAP benefits in the amount of \$3,696 for the period of July 1, 2018 through June 30, 2019.

**DECISION AND ORDER**

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 Petitioner was overissued FAP benefits in the amount of \$3,696 during the period of July 1, 2018 through June 30, 2019. Accordingly, the Department's decision is **AFFIRMED**.

EM/cg



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**Ellen McLemore**

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-Lapeer-Hearings  
MDHHS-Recoupment-Hearings  
M. Holden  
D. Sweeney  
BSC2- Hearing Decisions  
MOAHR

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

