



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

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██████████, MI ██████████

Date Mailed: May 14, 2020  
MOAHR Docket No.: 20-001348  
Agency No.: ██████████  
Petitioner: ██████████ ██████████

**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. The hearing was adjourned on March 17, 2020. After due notice, telephone hearing was held on May 12, 2020, from Lansing, Michigan. Petitioner represented himself. The Department was represented by April Ketner.

**ISSUE**

Did the Department of Health and Human Services (Department) properly determine that Petitioner received an overissuance of Food Assistance Program (FAP) benefits due to client error?

**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 January 3, 2019, the Department received Petitioner's Redetermination (DHS-1010) form. Exhibit A, pp 11-18.
2. Petitioner reported living in a household of three on his January 3, 2019, Redetermination form, but that he did not purchase and prepare food with the other two household members. Exhibit A, p 12.
3. Petitioner reported on his January 3, 2019, application that he expected to receive self-employment in the gross weekly amount of \$██████ Exhibit A, p 15.
4. On January 3, 2019, the Department sent Petitioner a Verification Checklist (DHS-3503) requesting verification of housing expenses by January 14, 2019. Exhibit A, pp 19-20.

5. On January 3, 2019, the Department sent Petitioner a Verification Checklist (DHS-3503) requesting verification of self-employment income by January 14, 2019. Exhibit A, pp 21-22.
6. On January 16, 2019, the Department notified Petitioner that he was eligible for Food Assistance Program (FAP) benefits as a household of one with a net income of \$█ Exhibit A, pp 23-28.
7. On July 20, 2019, the Department notified Petitioner that he was not eligible for Food Assistance Program (FAP) benefits effective September 1, 2019. Exhibit A, pp 29-33.
8. On December 17, 2019, the Department received Petitioner's application for Medical Assistance (MA), and he reported a household of three. Exhibit A, pp 34-39.
9. Petitioner reported on his December 17, 2019, application form that he planned on filing his federal tax return jointly with a spouse, claimed a tax dependent, and that there were no non-parent caregivers in the household. Exhibit A, p 36.
10. On December 18, 2019, the Department notified Petitioner that he was not eligible for Medical Assistance (MA). Exhibit A, pp 40-43.
11. On December 18, 2019, Petitioner's benefits case was referred for investigation into a possible overissuance of Food Assistance Program (FAP) benefits. Exhibit A, p 44.
12. Petitioner received a \$192 monthly allotment of Food Assistance Program (FAP) benefits in each month from March 1, 2019, through August 31, 2019. Exhibit A, p 45.
13. A member of Petitioner's household received child support from March 1, 2019, through August 31, 2019. Exhibit A, p 67.
14. A member of Petitioner's household has been employed since September 1, 2015, and received earned income from January 3, 2019, through September 26, 2019. Exhibit A, pp 68-71.
15. On January 8, 2020, the Department sent Petitioner a Notice of Overissuance (DHS-4358) instructing him that a \$1,152 overissuance of Food Assistance Program (FAP) benefits due to client error would be recouped. Exhibit A, pp 60-65.
16. On February 3, 2020, the Department received Petitioner's request for a hearing protesting the recoupment of Food Assistance Program (FAP) benefits. Exhibit A, pp 4-7.

### **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.

On January 3, 2019, Petitioner reported that he was living in a household of three people but that he did not purchase and prepare food with the other household members. Petitioner reported that he was employed and expected to receive a \$■■■■ gross weekly income. On January 16, 2019, the Department notified Petitioner that he was eligible for FAP benefits as a household of one with a net income of \$■■■

On July 20, 2019, the Department notified Petitioner that his FAP benefits would close effective September 1, 2019.

On December 17, 2019, the Department received Petitioner's application for Medical Assistance (MA) and reported a household of three. On Petitioner's December 17, 2019, application form, Petitioner reported being married and having a tax dependent. On December 18, 2019, the Department notified Petitioner that he was not eligible for MA benefits based on his household's taxable income.

FAP group composition is established by determining who lives together, the relationship of the people who live together, whether the people living together purchase and prepare food together or separately, and whether the persons resides in an eligible living situation. Spouses and their children must be included in the same FAP group. Department of Human Services Bridges Eligibility Manual (BEM) 212 (July 1, 2019), p 1.

Petitioner was not eligible for FAP benefits while incarcerated in an institution where meals are served as part its normal operations. BEM 212.

The gross income limit for a household of three was \$2,252 from March 1, 2019, through August 31, 2019.

The only evidence presented on the record supporting a finding that Petitioner was married is a case note dated January 8, 2020, indicating that Petitioner was married in

January of 2019. The Department argues that an absence of verification of the marriage is evidence that the marriage was not reported.

However, there is a lack of evidence of the actual marriage date. Petitioner had a duty to report the marriage within 10 days, but that date cannot be determined without reliable evidence of when Petitioner became legally married.

Petitioner offered to submit evidence of the marriage date during the hearing, but it remains the Department's burden to establish that its intended actions are correct. There is evidence of an overissuance, but the Department has failed to present a preponderance of evidence to establish the correct start of that overissuance, and whether that overissuance was caused by client error or Department error. Either way, the Notice of Overissuance mailed to Petitioner on January 8, 2020, is not supported by the Department's exhibits, and 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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined that Petitioner received a \$1,152 overissuance of Food Assistance Program (FAP) benefits during the period of March 1, 2019, through August 31, 2019.


#### **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:

Delete the Food Assistance Program (FAP) overissuance associated with Claim ID# [REDACTED] from Petitioner's benefits case file and cease any recoupment of that debt.

KS/nr

  
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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**

Julie M Booms  
1911 Sand Beach Road  
Bad Axe, MI  
48413

Huron County DHHS- via electronic mail

OIG Hearings- via electronic mail

L. Bengel- via electronic mail

**DHHS Department Rep.**

MDHHS-Recoupment- via electronic mail  
235 S Grand Ave  
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**Petitioner**

██████████ - via first class mail  
██████████  
██████████, MI  
██████████