



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], MI [REDACTED]

Date Mailed: July 23, 2020  
MOAHR Docket No.: 20-003713  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Landis Lain**

### **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 15, 2020, from Lansing, Michigan. The Petitioner was represented by Petitioner [REDACTED]. The Department of Health and Human Services (Department or Respondent) was represented by Rebecca Smalley, Recoupment Specialist.

### **ISSUE**

Did the Department properly determine that Petitioner received excess Food Assistance Program (FAP) benefits which must be recouped?

### **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 receiving FAP benefits for himself and his wife.
2. On [REDACTED], 2019 HH applied for assistance by signing assistance application DHS-1171. By doing so he acknowledged rights and responsibilities which include repaying over issued benefits.
3. On September 9, 2019, Grantee [REDACTED] contacted the caseworker stating her husband [REDACTED] started working.

4. Caseworker mailed DHS-38 employment verification by Central Print the same day.
5. Employment verification was not returned.
6. On January 16, 2020, Petitioner's wife passed away.
7. On January 24, 2020, Petitioner called and let the Department know that his wife died. He reported his income as \$ [REDACTED] per hour 24-32 hours per week.
8. On February 4, 2020, a second employment verification for was sent to Petitioner.
9. On March 4, 2020, the Department a mailed third employment verification form to HH by Central Print.
10. On April 2, 2020, an over issuance referral was received in recoupment.
11. On April 10, 2020, RS processed the over issuance referral. The Department made three attempts to verify income with no response.
12. RS created FAP claim 100007584894 as a client error for December 1, 2019 – February 29, 2020, in the amount of \$1,017.00. Notice of over issuance was mailed to the HH by Central Print.
13. On April 21, 2020, a hearing request was received in the local office.
14. On April 23, 2020, a cold call was made to [REDACTED] at [REDACTED] at approximately 1:57 pm. Mr. [REDACTED] stated that he was made grantee after the passing of his wife. She had called to report his employment and he thought that the verifications had been taken care of. He reapplied for FAP recently and found in talking with his worker that they were not received, and the worker explained the administrative recoupment. RS explained to Mr. [REDACTED] that all adult group members are liable for an over issuance. RS also explained that the benefits that were on his wife's card were transferred to his card, so he still had use of them after her passing. RS also explained that with three failed attempts by the Department to verify income RS used the IG-011 report and income averaging. He has the right to supply the actual income and the debt would be re-computed. RS also explained the hearing process and supplied him with office phone number explaining that they retrieve messages daily and would call him back if he had any further questions during the hearing process. Client stated that he wanted to proceed with the hearing process.
15. The Department is requesting that an order be issued for repayment of allegedly over issued FAP benefits in the amount of \$ 1,017.00 as a client error for December 1, 2019 – February 29, 2020.

## **CONCLUSIONS OF LAW**

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a Department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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.

Pertinent Department policy dictates:

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the over issuance. BAM 700, p 1 (1/1/2016).

Recoupment is a MDHHS action to identify and recover a benefit over issuance. A recoupment specialist (RS) is the specialist assigned to process over issuances and act as liaison with OIG, reconciliation and recoupment section (RRS), and other personnel involved with recoupment and collections. BAM 700 page 2

An agency error is caused by incorrect action (including delayed or no action) by MDHHS staff or Department processes. Some examples are:

- Available information was not used or was used incorrectly.
- Policy was misapplied.
- Action by local or central office staff was delayed.
- Computer errors occurred.
- Information was not shared between Department divisions such as services staff.
- Data exchange reports were not acted upon timely (wage match, new hires, BENDEX, etc.).

If unable to identify the type, record it as an agency error. FIP, SDA, CDC and FAP Agency errors are not pursued if the estimated amount is less than \$250 per program. BEM 700, page 5

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. A client error also exists when the client's timely request for a hearing result in deletion of a MDHHS action, and any of the following occurred:

- The hearing request is later withdrawn.
- MAHS denies the hearing request.
- The client or administrative hearing representative fails to appear for the hearing and MAHS gives MDHHS written instructions to proceed.
- The hearing decision upholds the Department's actions; see BAM 600. BAM 700 page 7

When a potential over issuance is discovered the following actions must be taken:

1. Immediately correct the current benefits; see BAM 220, Case Actions, for change processing requirements.
2. Obtain initial evidence that an over issuance potentially exists.
3. Determine if it was caused by Department, provider or client actions.
4. Refer any over issuances needing referral to the RS within 60 days of suspecting one exists.

**Exception:** Office of Quality Assurance (OQA) discovered over issuances must be referred to the RS within 7 days of receipt of the OQA findings. OQA has already verified one exists. FIP, SDA, CDC and FAP Within 60 days of suspecting an over issuance exists, complete a DHS-4701, Over issuance Referral, and refer the following over issuances to the RS for your office:

- All client and agency errors over \$250.
- All suspected IPV errors.
- All CDC provider errors BAM 700 page 10

Petitioner testified that he reported all income when he received the proper forms to do so. His wife died and he asked the Department if he could use the FAP benefits and the caseworker told him yes. Petitioner's argument is a compelling equitable argument to be excluded from Department policy. This Administrative Law Judge has no equity powers and cannot make a decision that is in contravention of Department policy.

Evidence on the record indicates Petitioner received an over issuance of Food Assistance Program benefits in the amount of \$1,017.00 based upon the fact that

Petitioner's income was properly budgeted. The Department is required to recoup overissued benefits.


**Petitioner has been overissued FAP benefits in the amount of \$1,017.00, which must be recouped.**

The Department is compelled by Department policy to recoup any over-issued benefits in excess of the amount of \$250. The Department has established its case by a preponderance of the evidence.

**DECISION AND ORDER**

Accordingly, the Department's decision is **AFFIRMED**. The Department is **ORDERED** to initiate the Recoupment process in accordance with Department policy within ten days of receipt of this Decision and Order.

LL/hb

  
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**Landis Lain**  
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**

Saginaw County via electronic mail

BSC2 via electronic mail

M. Holden via electronic mail

D. Sweeney via electronic mail

MDHHS-OIG via electronic mail

**DHHS Department Rep.**

MDHHS-Recoupment via electronic mail

**Petitioner**

[REDACTED], MI [REDACTED]