



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR



Date Mailed: July 28, 2020  
MOAHR Docket No.: 20-004134  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Janice Spodarek

### **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 22, 2020.

Petitioner appeared unrepresented. Rebecca Ogrodowski, Service Coordinator, appeared as a witness.

The Department of Health and Human Services (Department), was represented by Jason Morris, Recoupment Specialist.

Department Exhibit A.89 was offered and admitted into the record.

### **ISSUE**

Did the Department properly propose to recoup \$1809.00 in Food Assistance Program (FAP) overissuance between the months of June 2019 and April 2020 due to agency 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 [REDACTED] 2019, Petitioner applied for FAP benefits reporting RSDI income at the time of the application.
2. The Department failed to budget Petitioner's reported RSDI income.

3. On July 11, 2019, the Department issued a Notice of Case Action approving Petitioner FAP benefits for June 2019 at \$32.00 per month, and from July 1, 2019, through May 31, 2021, at \$192.00 per month. Exhibit A.50-54.
4. On April 10, 2020, the Department conducted a redetermination in Petitioner's case discovering that due to agency error, Petitioner's previously reported RSDI income had not been budgeted. Exhibit A.77-90.
5. On April 21, 2020, the Department issued a Department and Client Error Information, Repayment Agreement, and a Hearing Request for Overissuance or Recoupment Action. Exhibits A.9-4.
6. On May 11, 2020, Petitioner filed a hearing request.
7. On May 14, 2020, the Department conducted a prehearing conference with Petitioner, where he disputed recoupment of his full allotment for the months of March and April 2020, under the authority of ESA 2020-15.

### **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.

Applicable policy and procedure to the case herein, is found primarily at BAM 700, 705, and 725; BEM 500-555. Correspondent federal regulations are found at 7 CFR 273.18. The Department testified that it has the burden of proof at a recoupment hearing.

In this case, the Department contends that Petitioner was overissued FAP benefits between the months of June 2019 through April 2020, due to agency error. The Department's budget show Petitioner was eligible for zero (\$0.00) FAP benefits in June 2019; \$15.00 per month during the months of July 2019 through September 2019; and \$16.00 per month between the months of October 2019 through April 2020. Petitioner received \$32.00 in the month of June 2019; \$192.00 in the months of July 2019 through September 2019; and \$194.00 from October 2019 through April 2020. Thus, the Department argues that it is entitled to recoup \$1809.00.

Petitioner does not dispute the calculation, or that he owes the amounts the Department calculated from June 2019 through February 2020. However, Petitioner contends that under the authority of ESA 2020-15, a COVID-19 Response Emergency Food Assistance Allotment, he was entitled to receive a full FAP allotment for the two months of March, 2020 and April 2020, as he was eligible for a \$16.00 FAP allotment for each month. The pertinent part of ESA 2020-15 states:

Effective March 27<sup>th</sup>, MDHHS under the direction of the Federal government, will provide an emergency allotment to address temporary food needs due to COVID-19 pandemic-related economic conditions for up to two months. The emergency allotment covers the March and April benefit periods for the Food Assistance Program Active FAP groups who are not currently receiving the maximum benefit amount for their group size will receive a supplement to bring their benefit amount up to the maximum amount allowed for their group size. Groups already receiving the maximum monthly benefit amount will not receive an additional supplement based on Food Nutrition Services (FNS) guidance. Notification for this supplement will be completed via a press release.... MDHHS ESA 2020-15 issued by Terrence M. Beurer, March 26, 2020.

The Department argues that Petitioner is not eligible for a full allotment on the grounds that the someone in the MDHHS had verbally informed the Department representative of the same.

The facts here, are that Petitioner was eligible for \$16.00 per month during March and April 2020. Under ESA 2020-15, as a FAP recipient eligible for less than the full allotment, but who is eligible for some FAP benefits, is eligible for the full allotment based on his/her group size during the COVID-19 crisis for the months of March and April 2020. Petitioner was eligible for a full monthly allotment of \$194.00 under the authority of ESA 2020-15. The Department offered no authority to refute the presumption of ESA 2020-15. The Department has failed to meet its burden of proof.

In addition, unrefuted evidence is that Petitioner made his argument at the prehearing conference. The Department was given full notice of Petitioner's intent to raise this authority at the administrative hearing, and yet, the Department did not come prepared to offer any evidence to the contrary.

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 act in accordance with Department policy when it proposed to recoup FAP benefits for June 2019 through February 2020, but did not meet its burden of proof when it failed to remove March 2020 and April 2020 from the recoupment FAP budgets on the grounds that Petitioner was eligible for a full FAP allotment. Thus, the record here, supports a correct recoupment action for the months from June 2019 through February 2020. However, the record herein, does not support a correct recoupment action for the months of March and April 2020.

**DECISION AND ORDER**

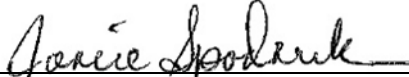
Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to a proposed FAP recoupment for the months of June 2019 through February 2020 and **REVERSED IN PART** with respect to its proposed recoupment for the months of March 2020 and April 2020.

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:

- 1) Proceed with its recoupment action with regards to the months of June 2019 through February 2020, and
- 2) Remove and refrain any recoupment action from Bridges on Petitioner's case with regards to the months of March 2020 and April 2020.

**IT IS SO ORDERED.**

JS/ml



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Janice Spodarek  
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 Department Rep.**

MDHHS-Recoupment – Via Electronic Mail

**DHHS**

Renee Olian – Via Electronic Mail

Kalamazoo County DHHS – Via Electronic Mail

OIG – Via Electronic Mail

L. Bengel – Via Electronic Mail

**Petitioner**

  
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