



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
[REDACTED], MI [REDACTED]

Date Mailed: August 6, 2020  
MOAHR Docket No.: 20-004202  
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 28, 2020, from Lansing, Michigan. The Petitioner was represented by Petitioner [REDACTED] and his wife [REDACTED]. The Department of Health and Human Services (Department or Respondent) was represented by Mary Peterson, Recoupment Specialist.

Respondent's Exhibit A pages 1-197 were admitted as evidence.

**ISSUE**

Did the Department properly determine that Petitioner received overissued Food Assistance Program (FAP) 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. On April 2, 2019, the Recoupment Specialist received a DHS-4701 over issuance referral due to agency budgeting annual amount paid for property tax expense as paid monthly in error.
2. On [REDACTED], Petitioner submitted an application for Food Assistance Program benefits for a group size of six.
3. Petitioner signed the application certifying that he had read and understood his rights and responsibilities, including responsibility to report changes in household

circumstances, and that is anyone in the house will receive benefits they were not eligible for, the adults in the household must repay the extra benefits.

4. On February 22, 2018, Petitioner submitted property taxes for September 2017 for \$368.30 and Winter 2017 for \$589.52 total \$957.90 annually.
5. On March 1, 2018, a Notice of Case Action and Simplified Six-Month Review were mailed to Petitioner informing him of Food Assistance Program benefits approval for the period of April 1, 2018, to March 31, 2019.
6. On February 19, 2019, the Department discovered that the annual tax amount was budgeted as monthly rather than yearly.
7. On March 1, 2019, a Notice of Case Action was mailed to Petitioner for the period of April 1, 2019, to March 31, 2020, with corrected amount budgeted for housing costs.
8. While completing the investigation, the Recoupment Specialist discovered that Petitioner's wife self-employment income from Life Insurance and self-employment income from Personal Assistant projected for the period of August 1, 2018, and March 31, 2019, was average for the period of April, May, June and July, but income was entered for April, May and June.
9. Three months of income was divided by four months.
10. Agency error was determined for the over issuance period of the April 1, 2018, to March 31, 2019, in the amount of \$5,220.
11. On May 1, 2020, a Notice of Overissuance was mailed to Petitioner.
12. On May 13, 2020, Petitioner filed a request for hearing to contest the Department's negative action.
13. The Department re-calculated Petitioner's self-employment income and determined that the actual over issuance was \$2,916.00.
14. A second notice of over issuance was mailed to petitioner on June 1, 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. 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 may have received an over issuance of Food Assistance Program benefits based upon the fact that Petitioner's income was not properly budgeted due to agency error. The Department is required to recoup overissued benefits. However, the Department recalculated the amount of overissued benefits after the request for hearing and came up with a different amount than originally calculated. Thus, the department has not established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it came up when the over-issued amount of \$5,220. The Department must re-calculate Petitioner's income and deductions and issue an updated notice of overissuance with the appropriate calculations.

The Department is compelled by Department policy to recoup any over-issued benefits in excess of the amount of \$250. The Department has not established its case by a preponderance of the evidence.


**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:

1. Recalculate Petitioner's income in accordance with Department policy for the time period of April 1, 2018. to March 31, 2019;
2. Redetermine eligibility for FAP benefits for the months of April 1, 2018, to March 31, 2019;
3. Recalculate the amount of overissued benefits, if any;
4. Notify Petitioner of the updated amount of overissued FAP benefits; and
5. If there an overissuance, begin recoupment proceedings in accordance with Department policy.

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**

Montcalm County via electronic mail

BSC3 via electronic mail

M. Holden via electronic mail

D. Sweeney via electronic mail

**DHHS Department Rep.**

MDHHS-Recoupment via electronic mail

**Petitioner**

[REDACTED], MI [REDACTED]