



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]

Date Mailed: February 13, 2019  
MAHS Docket No.: 18-014028  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: John Markey**

**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 11, 2019, from Detroit, Michigan. Petitioner appeared and represented himself. The Department of Health and Human Services (Department) was represented by Latoi Patillo, Recoupment Specialist. During the hearing, a 91-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-91.

**ISSUE**

Did Petitioner receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup and/or collect?

**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 recipient of FAP benefits in a group of four.
2. Petitioner reported to the Department that he received monthly unearned income of \$2,157 and that each of his two children received \$548 in monthly unearned income. Thus, Petitioner's reported total unearned income was \$3,253. Exhibit A, p. 59.
3. The Department only budgeted the unearned income from Petitioner (\$2,157) when calculating Petitioner's monthly FAP benefits. Exhibit A, pp. 52-55.

4. From June 1, 2016, through May 31, 2017, Petitioner received a total of \$4,653 in FAP benefits from the Department. Exhibit A, p. 6.
5. When calculating Petitioner's monthly FAP benefits from June 1, 2016, through May 31, 2017, the Department did not factor in any of the unearned income Petitioner's group received on account of Petitioner's two children. Exhibit A, pp. 1-33.
6. After reviewing Petitioner's case, the Department worker involved forwarded the matter to a recoupment specialist via an Overissuance Referral, Form 4701, on June 6, 2018. Exhibit A, p. 91.
7. On September 18, 2018, the recoupment specialist issued to Petitioner a Notice of Overissuance, Forms 4358-A through 4358-D. The Notice informed Petitioner that due to a Departmental budgeting error, the Department overissued Petitioner \$4,653 in FAP benefits from June 1, 2016 through May 31, 2017. Exhibit A, pp. 1-5.
8. On [REDACTED], 2018, Petitioner submitted to the Department a request for hearing objecting to the Department's finding that Petitioner was overissued FAP benefits.

### **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, the Department is seeking to recoup an alleged \$4,653 overissuance of FAP benefits issued to Petitioner from June 1, 2016, through May 31, 2017. The Department alleges that the overissuance was caused by the Department's error in failing to budget the properly reported unearned income. The Department now seeks to recoup and/or collect that amount from Petitioner.

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. BAM 700 (October 2016), p. 1. An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to receive. BAM 700, p. 1. A client error overissuance occurs when the client receives more benefits than he or she was entitled to because the client gave

incorrect or incomplete information to the Department. BAM 700, p. 6. An agency error overissuance is caused by incorrect action (including delayed or no action) by the Department. BAM 705 (January 2016), p. 1. Regardless of whether the overissuance was caused by client error or agency error, the Department must attempt to establish any alleged overissuance over \$250. BAM 700, p. 5; BAM 715, p. 7.

In this case, Petitioner received a total of \$4,653 in FAP benefits for the time period of June 1, 2016, through May 31, 2017. At the time the Department was dispensing the FAP benefits, it was calculating Petitioner's monthly FAP benefits without taking into consideration the \$1,096 Petitioner's children received every month. This substantial underbudgeting of Petitioner's resulted in the Department overissuing FAP benefits to Petitioner. Thus, the Department has presented sufficient evidence to establish that there was an overissuance of FAP benefits from June 1, 2016, through May 31, 2017.

However, the Department did not present sufficient evidence to substantiate its calculation of the overissuance amount. The Department calculated that during the entire overissuance period, Petitioner's actual income rendered Petitioner ineligible for any FAP benefits. During the hearing, the Department provided the monthly overissuance budgets used to determine the amount Petitioner should have received. In each of the budgets, the Department made errors that may have impacted its overall calculation of the overissuance.

For instance, the budget for the month of July 2016 indicates that one of Petitioner's children received \$548 in unearned income while the other received \$1,097 of unearned income. However, at no point did the total unearned income attributable to the two children exceed \$1,096. Thus, Petitioner's income for that month was overstated in the budget. In many of the other months, the Department indicates that Petitioner had earned income. Most of that income came from self-employment through Petitioner's business. Countable income from self-employment equals the total proceeds of that self-employment minus allowable expenses. BEM 502 (July 2016), p. 3. Allowable expenses are the higher of 25 percent of the total proceeds or actual expenses. BEM 502, p. 3. Based on the evidence presented, the Department failed to account for any expenses related to the earned income. Thus, the Department's decision is reversed with respect to its calculation of alleged overissuance because of its failure to substantiate the income figures used in creating the budgets and mis-application of policy with respect to earned income from self-employment.

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department did establish an agency error FAP benefit overissuance to Petitioner from June 1, 2016 through May 31, 2017. However, the Department did not present sufficient evidence to determine the amount of that overissuance.

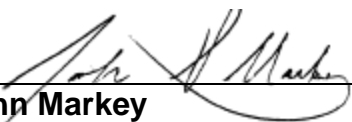
**DECISION AND ORDER**

Accordingly, the Department is **AFFIRMED** in part and **REVERSED** in part. The Department established that Petitioner received an overissuance of FAP benefits on account of agency error from June 1, 2016, through May 31, 2017. The Department did not, however, establish the amount of the overissuance.

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. Redetermine the amount of the overissuance of FAP benefits to Petitioner from June 1, 2016, through May 31, 2017, using accurate information and appropriately applying Department policy;
2. If there is conflict or uncertainty regarding any relevant issue, such as income or expenses, follow Department policy regarding verifications by allowing Petitioner the opportunity to present information related to the relevant issue in question; and
3. Issue Petitioner a new Notice of Overissuance in accordance with Department policy.

JM/cg

  
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**John Markey**  
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 Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS 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. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings  
Reconsideration/Rehearing Request  
P.O. Box 30639  
Lansing, Michigan 48909-8139

**Via Email:**

MDHHS-Recoupment-Hearings  
MDHHS-Oakland-4-Hearings  
M. Holden  
D. Sweeney  
BSC4- Hearing Decisions  
MAHS

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

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