



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

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Date Mailed: April 18, 2019  
MAHS Docket No.: 19-002536  
Agency No.: ██████████  
Petitioner: ██████████

**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 April 11, 2019, from Detroit, Michigan. Petitioner appeared and represented herself. Also appearing on behalf of Petitioner was ██████████. The Department of Health and Human Services (Department) was represented by Denise Beard, Recoupment Specialist. During the hearing, a 147-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-147.

**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 that included herself, her live-in partner ██████████ and three minor children. Exhibit A, p. 5.
2. At some point, Petitioner reported to the Department and verified her property taxes.
3. At all times relevant to the instant case, ██████████ and two of the minor children household members were receiving monthly RSDI benefits from the Social Security Administration. Exhibit A, pp. 22-30.

4. On July 15, 2014, the Department issued to Petitioner a Redetermination form to gather relevant information regarding Petitioner's ongoing eligibility for FAP benefits. Petitioner returned the completed form on [REDACTED] 2014. On the form, Petitioner reported that the only income in the household was Petitioner's earnings from her employment, which was reported to be \$ [REDACTED] every two weeks. Exhibit A, pp. 4-9.
5. On July 14, 2015, the Department issued to Petitioner a Redetermination form to gather relevant information regarding Petitioner's ongoing eligibility for FAP benefits. Petitioner returned the completed form on [REDACTED], 2015. On the form, Petitioner reported that the only income in the household was Petitioner's earnings from her employment, which was reported to be \$ [REDACTED] every two weeks. Exhibit A, pp. 10-15.
6. On July 11, 2016, the Department issued to Petitioner a Redetermination form to gather relevant information regarding Petitioner's ongoing eligibility for FAP benefits. Petitioner returned the completed form on [REDACTED], 2016. On the form, Petitioner reported that the only income in the household was Petitioner's earnings from her employment, which was reported to be \$ [REDACTED] every two weeks. Exhibit A, pp. 16-21.
7. The Department did not budget Petitioner's reported income or the unreported income when calculating Petitioner's monthly FAP benefits from September 1, 2014, through May 31, 2017. Exhibit A, pp. 45-127.
8. From September 1, 2014 through May 31, 2017, Petitioner received a total of \$21,400 in FAP benefits from the Department. Exhibit A, pp. 138-139.
9. After reviewing Petitioner's case, the Department worker involved forwarded the matter to a recoupment specialist via an Overissuance Referral, Form 4701, on May 24, 2017. Exhibit A, p. 146.
10. On August 29, 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 client error in failing to report the household members' unearned income, the Department overissued Petitioner \$16,966 in FAP benefits. Exhibit A, pp. 128-136.
11. On [REDACTED] 2019, 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 \$16,966 overissuance of FAP benefits issued to Petitioner from September 1, 2014, through May 31, 2017. The Department alleges that the overissuance was caused by the client's error in failing to report unearned income received by three different household members throughout the entire period. During the hearing, it also became clear that the Department also failed to budget Petitioner's reported income during the entire time period as well. The Department designated the overissuance a client error overissuance and factored in both the reported income and the unreported income to calculate the benefits Petitioner should have received during the alleged overissuance period. The Department now seeks to recoup and/or collect from Petitioner the difference between what Petitioner received and what the Department believes Petitioner should have received.

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. For a client error overissuance, the overissuance period begins the first month benefit issuance exceeds the amount allowed by policy or 72 months before the date it was referred to the recoupment specialist, whichever is later. BAM 715 (October 2017), p. 5. An agency error overissuance is caused by incorrect action (including delayed or no action) by the Department. BAM 705 (January 2016), p. 1. For an agency error overissuance, the overissuance period begins 12 months before the date the overissuance was referred to the recoupment specialist. BAM 705 (October 2018), p. 5. 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 \$21,400 in FAP benefits for the time period of September 1, 2014, through May 31, 2017, on the basis of having no income. However, Petitioner reported on three separate Redeterminations in 2014, 2015, and 2016 that she had earnings from her employment. Additionally, Petitioner's household included three members who were receiving RSDI income from the Social Security Administration the entire time. Thus, the Department calculated Petitioner's FAP benefits for nearly three years without taking into account either Petitioner's properly reported income or the income Petitioner repeatedly neglected to report. This substantial underbudgeting of Petitioner's income resulted in the Department overissuing FAP benefits to Petitioner. The Department presented sufficient evidence

to establish that there was an overissuance of FAP benefits from September 1, 2014, through May 31, 2017.

However, the Department did not present sufficient evidence to substantiate its calculation of the overissuance amount. The Department designated the overissuance a client error overissuance and presented budgets from September 1, 2014, through May 31, 2017. With respect to the portion of the overissuance caused by Petitioner's failure to report the RSDI, the Department properly included the unreported income into all of the months.

However, in each of the budgets, the Department also included Petitioner's reported earned income that was not previously budgeted. The portion of the overissuance attributable to the Department's failure to budget Petitioner's earned income is properly designed an agency error. As such, the overissuance period is only twelve months prior to the overissuance referral. Thus, the Department was only entitled to factor that unbudgeted but properly reported earned income into the overissuance budgets from June 1, 2016, through May 31, 2017. For all months prior to June 2016, the Department is prohibited from seeking to establish the agency error portion of the overissuance. As the Department included that income into the entire overissuance budget calculations, the Department is seeking to establish agency error overissuances well beyond the twelve-month limit.

Additionally, during the hearing, the Department representative acknowledged that the Department failed to take into account Petitioner's reported and verified property taxes. As those should have been factored into the overissuance budgets but were not, the end result of the overissuance calculation was inevitably erroneous. Based on the evidence presented, the Department failed to account for the property tax expenses.

Thus, the Department's decision is reversed with respect to its calculation of the alleged overissuance because of its mis-application of policy with respect to agency error overissuances and property taxes.

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department did establish that Petitioner received an overissuance of FAP benefits from September 1, 2014 through May 31, 2017. However, the Department did not present sufficient evidence to determine the amount of that overissuance. The Department is required to recalculate the overissuance. In doing so, the Department is prohibited from including in the budget Petitioner's reported and unbudgeted earned income for any month prior to June 2016 and must factor into the budget for all months Petitioner's reported and verified property taxes.

### **DECISION AND ORDER**

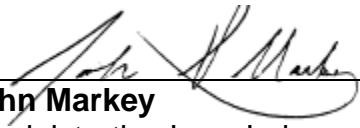
Accordingly, the Department is **AFFIRMED** in part and **REVERSED** in part. The Department established that Petitioner received an overissuance of FAP benefits on

from September 1, 2014, 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 September 1, 2014, through May 31, 2017, using accurate information and appropriately applying Department policy;
2. When calculating Petitioner's overissuance, the Department shall include in the budget Petitioner's reported and verified property tax information;
3. When calculating Petitioner's overissuance for the period from September 1, 2014, through May 31, 2016, the Department is prohibited from budgeting any of Petitioner's earned income as doing so would be an attempt to establish an agency error overissuance for a period outside of the allowable agency error overissuance period;
4. 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
5. 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  
MDHHS-Wayne-19-Hearings  
M. Holden  
D. Sweeney  
BSC4- Hearing Decisions  
MAHS

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

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████████████████████  
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**Authorized Hearing Rep. –  
Via First-Class Mail:**

████████████████████  
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