



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]

Date Mailed: November 8, 2019  
MOAHR Docket No.: 19-010872  
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 November 6, 2019 from Detroit, Michigan. Petitioner appeared and represented himself. Also appearing on behalf of Petitioner was [REDACTED]. The Department of Health and Human Services (Department) was represented by Jennifer Braxmaier, Recoupment Specialist. During the hearing, an 80-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-80.

**ISSUE**

Did the Department properly determine that Petitioner received a \$1,597 agency error overissuance of Food Assistance Program (FAP) benefits from January 1, 2016 through December 31, 2016?

**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], 2016, Petitioner submitted an application for FAP benefits to the Department. On the application, he indicated that he lived in a household of five people, including his non-citizen wife. Petitioner also indicated that he was working and earning income from his job with [REDACTED]. Exhibit A, pp. 4-25.
2. On February 10, 2016, the Department issued to Petitioner a Notice of Case Action informing Petitioner that the application was approved for a household size of five, which erroneously included Petitioner's wife. Additionally, the notice informed

Petitioner that he was a simplified reporter and had to inform the Department within ten days of the end of any month in which his earnings exceeded \$3,078. Exhibit A, pp. 26-30.

3. Petitioner received benefits during the entire year of 2016 for a household of five. Additionally, Petitioner's income exceeded the income limit for five of the months of 2016. However, Petitioner never reported to the Department that his income exceeded the limit. Exhibit A, pp. 34-46; 73-74.
4. After reviewing Petitioner's case, the Department worker involved forwarded the matter to a recoupment specialist via an Overissuance Referral, Form 4701, on December 1, 2016 and again on February 6, 2017.
5. On September 11, 2019, the Department issued to Petitioner a Notice of Overissuance, Forms 4358-A through 4358-D. The Notice informed Petitioner that due to an agency error in including Petitioner's wife in the FAP group and clients failure to report his income exceeding the limit, the Department overissued Petitioner \$1,597 in FAP benefits from January 1, 2016 through December 31, 2016. Exhibit A, pp. 75-80.
6. On [REDACTED] 2019, Petitioner submitted to the Department a request for hearing objecting to the Department's September 11, 2019 Notice of Overissuance.

### **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 alleges that Petitioner received a \$1,597 overissuance of FAP benefits from January 1, 2016 through December 31, 2016 as a result of the Department's error in including Petitioner's non-citizen wife in his FAP group. The Department acknowledges that the alleged overissuance was at least partly attributable to a mistake made by the Department. However, the Department's position is that even though it was at fault for the alleged overpayment, the applicable law and regulations require the Department to attempt to establish the overissuance and collect the

erroneously overpaid benefits. Petitioner objects to the Department's attempt to establish and collect the alleged overissuance as he asserts he did everything he was supposed to do.

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. BAM 700 (January 2018), p. 1. The amount of the overissuance is the benefit amount the group actually received minus the amount the group was eligible to receive. BAM 700, p. 1.

An agency error overissuance is caused by incorrect action by the Department staff or Department processes. BAM 700, p. 5. For agency error overissuances, the overissuance period starts the first month when benefit issuance exceeds the amount allowed by policy, or 12 months before the date the overissuance was referred to the recoupment specialist, whichever 12 month period is later. BAM 705 (January 2016), pp. 5-6. The overissuance period ends the month before the benefit is corrected. BAM 705, pp. 5-6. 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 (October 2017), p. 7.

From January 1, 2016 through December 31, 2016, the Department issued to Petitioner \$3,045 in FAP benefits. In determining Petitioner's monthly FAP amount for that time period, the Department erroneously included Petitioner's wife as a group member even though Petitioner correctly informed the Department of her ineligibility. Additionally, for four of the months of the overissuance period, Petitioner exceeded the simplified reporting limit and failed to inform the Department of the additional income. When Petitioner's wife was removed from the group and the income was included in the budget, it was determined that Petitioner was only entitled to \$1,448 during that time period. Thus, the Department determined that Petitioner received an overissuance of FAP benefits totaling \$1,597.

After reviewing the record, the Department has met its burden of proving that Petitioner received a \$1,597 overissuance of FAP benefits from January 1, 2016 through December 31, 2016 on account of the Department's erroneous inclusion of Petitioner's wife in the FAP group and Petitioner's failure to report that he exceeded the simplified reporting income limit.

Petitioner's objections to the unfairness of the Department's actions in this case amount to equitable arguments. Unfortunately, the undersigned Administrative Law Judge does not have any equitable powers and must follow the law and Department policy, which compels the Department to seek to establish overissuances, even when those overissuances were caused by the Department's own errors, as was the case here.

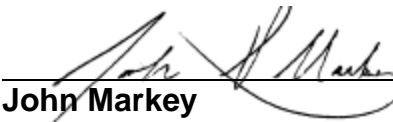
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department acted in accordance with Department policy when it determined that Petitioner received a \$1,597

Agency Error overissuance of FAP benefits from January 1, 2016 through December 31, 2016. The Department is entitled to initiate recoupment and/or collection activities for the overissuance, less any amounts already recouped and/or collected, pursuant to law and Department policy.

**DECISION AND ORDER**

Accordingly, the Department's decision is **AFFIRMED**.

JM/tm



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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 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**

Karen Painter  
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**Petitioner**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

cc: FAP: M. Holden; D. Sweeney  
Branch County AP Specialist (3)