



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: December 12, 2019  
MOAHR Docket No.: 19-011997  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Kevin Scully**

### **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; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a telephone hearing was held on December 4, 2019, from Lansing, Michigan. Petitioner was represented by herself. The Department of Health and Human Services was represented by Rebecca Smalley and Renee Martinez.

### **ISSUE**

Did the Department of Health and Human Services (Department) properly determine that Petitioner received an overissuance of Food Assistance Program (FAP) benefits that 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 [REDACTED], 2018, the Department received Petitioner's application for Food Assistance Program (FAP) benefits as a household of one. Exhibit A, pp 67-80.
2. Petitioner's spouse receives Long Term Care (LTC) in an institutional setting outside Petitioner's home.
3. On March 26, 2018, the Department notified Petitioner that she was entitled to a community spouse allowance of \$2,098 from the gross monthly income received by her and her husband. Exhibit A, pp 52-54.
4. Petitioner received Food Assistance Program (FAP) benefits totaling \$2,169 from June 1, 2018, through May 31, 2019. Exhibit A, pp 16-17.

5. On October 9, 2019, the Department sent Petitioner a Notice of Overissuance (DHS-4358) instructing her that she had received a \$2,169 overissuance of Food Assistance Program (FAP) benefits due to the Department's failure to apply the community spouse allowance towards her eligibility for benefits. Exhibit A, pp 8-13.
6. On November 4, 2019, the Department received Petitioner's request for a hearing protesting the recoument of Food Assistance Program (FAP) benefits. Exhibit A, pp 6-7.

### **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.

All earned and unearned income available is countable unless excluded by policy. Earned income means income received from another person or organization or from self-employment for duties that were performed for compensation or profit. Unearned income means all income that is not earned, including but not limited to funds received from the Family Independence Program (FIP), State Disability Assistance (SDA), Child Development and Care (CDC), Medicaid (MA), Social Security Benefits (RSDI/SSI), Veterans Administration (VA), Unemployment Compensation Benefits (UCB), Adult Medical Program (AMA), alimony, and support payments. The amount counted may be more than the client actually receives because the gross amount is used prior to any deductions. Department of Human Services Bridges Eligibility Manual (BEM) 500 (July 1, 2017).

Money diverted by a hospitalized or long-term care facility patient to their community spouse at home is a contribution, and the Department will count the gross amount actually received as the community spouse's unearned income. Department of Health and Human Services Bridges Eligibility Manual (BEM) 503 (October 1, 2019), p 5.

On [REDACTED], 2018, the Department received Petitioner's application for FAP benefits. Petitioner received FAP benefits totaling \$2,169 from June 1, 2018, through May 31, 2019. During that time, Petitioner received a community spouse allowance in the gross monthly amount of \$2,098.

From June 1, 2018, through September 30, 2018, the gross income limit for a household of one to receive any FAP benefits was \$1,307. Department of Health and Human Services Reference Table Manual (RFT) 250 (October 1, 2017), p 1. From October 1, 2018, through May 31, 2019, the gross income limit for a household of one was \$1,316. RFT 250 (October 1, 2018).

Due to Department error, the community spouse allowance was not applied towards Petitioner's eligibility for FAP benefits as unearned income as directed by BEM 503. Instead, Petitioner received FAP benefits as a household of one receiving no income.

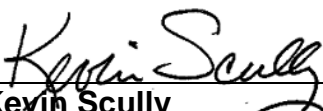
If the Department had properly determined Petitioner's eligibility for FAP benefits based on the community spouse allowance, Petitioner would not have been eligible for any FAP benefits. Therefore, Petitioner received a \$2,169 overissuance of FAP benefits. Since it was the Department that determined the community spouse allowance amount and failed to apply that amount towards Petitioner's eligibility for FAP benefits, the overissuance was caused by Department error.

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 \$2,169 overissuance of Food Assistance Program (FAP) benefits that must be recouped.

### **DECISION AND ORDER**

Accordingly, the Department's decision is AFFIRMED.

KS/hb

  
\_\_\_\_\_  
**Kevin Scully**  
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**

Kathleen Verdoni  
411 East Genesee  
PO Box 5070  
Saginaw, MI 48607

**DHHS Department Rep.**

MDHHS-Recoupment  
235 S Grand Ave  
Suite 1011  
Lansing, MI 48909

Saginaw County, DHHS

BSC2 via electronic mail

M. Holden via electronic mail

D. Sweeney via electronic mail

MDHHS-OIG via electronic mail

**Petitioner**

[REDACTED]  
[REDACTED], MI [REDACTED]