



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

[REDACTED], MI [REDACTED]

Date Mailed: December 16, 2019  
MOAHR Docket No.: 19-012074  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Janice Spodarek

### **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 hearing was held on December 12, 2019, from Lansing, Michigan. Petitioner appeared unrepresented. The Department of Health and Human Services (Department) was represented by Jony Anderson, Recoupment Specialist from Central Office. A representative from the local office failed to appear.

### **ISSUE**

Did the Department properly determine that Petitioner was overissued FAP benefits due to client error?

### **FINDINGS OF FACT**

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. During the alleged overissuance time period reviewed herein, Petitioner was a beneficiary of the FAP program. Petitioner was a semi-annual reporter.
2. On November 6, 2019, the Respondent issued a Notice of Overissuance for \$257.00 for the FAP program, due to client error for the period from December 1, 2016 to April 30, 2017, due to an increase in income as a result of a raise Petitioner received, not previously budgeted by the Department.
3. On November 13, 2019, Petitioner filed a hearing request.

### **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.

Department policies are found primarily in BEM and BAM. Corresponding federal regulations are found at 7 CFR 7 CFR 273.18.

In this case, the Department alleges that Petitioner failed to notify the Department of a change in income, due to a pay raise. Petitioner argues that she informed the Department of all and any changes in circumstances during the alleged overissuance time period. The Recoupment Specialist representing the Department at this administrative hearing did not have personal knowledge of the case. As noted above, the county failed to appear at this administrative hearing. Thus, no witness with personal knowledge presented at the administrative hearing for testimony and/or cross-examination.

Here, Petitioner does not dispute the income, or the budgets in recalculating her eligibility. Rather Petitioner disputes that the error was client error.

Where the evidence is no more than equivocal, the evidence must weigh against the party with the burden of proof. The Department representative testified that the Department has the burden of proof by a preponderance of evidence. Thus, the evidence does not support finding that there was client error and thus, this ALJ finds that the error was agency error. As to the \$257.00 amount, the calculation must stand as it is, unrefuted.

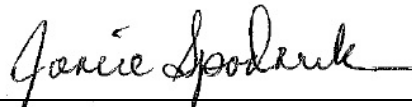
### **DECISION AND ORDER**

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to the \$257.00 overissuance calculation, and **REVERSED IN PART**, as to the type of error.

**THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS**

HEARING DECISION, WITHIN TEN DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Change the error in this matter from client to agency error, and
- 2) Issue any required new notices with the reclassification of the error.



JS/ml

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Janice Spodarek  
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**

Carisa Drake  
190 East Michigan  
Battle Creek, MI 49016

**DHHS Department Rep.**

MDHHS-Recoupment – Via Electronic  
Mail  
235 S. Grand Ave.  
Suite 1011  
Lansing, MI 48909

Calhoun (21) County DHHS – Via  
Electronic Mail

L. Bengel – Via Electronic Mail

OIG – Via Electronic Mail

**Petitioner**

[REDACTED]  
[REDACTED], MI [REDACTED]