



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

[REDACTED]

Date Mailed: January 24, 2020  
MOAHR Docket No.: 19-013230  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Ellen McLemore**

### **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 January 22, 2020, from Detroit, Michigan. Petitioner was present and represented himself. The Department of Health and Human Services (Department) was represented by Candice Benns, Hearing Facilitator; Carolyn Bagley, Lead Worker; and Rhonda Holland, Recoupment Specialist.

### **ISSUE**

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

### **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 a recipient of FAP benefits during the period of April 1, 2018 through March 31, 2019 (Exhibit A, pp. 89-90).
2. On [REDACTED], 2019, Petitioner completed a redetermination related to his FAP benefit case where he reported he did not have any medical expenses (Exhibit A, pp. 7-14).
3. Between the period of April 1, 2018 through March 31, 2019, Petitioner received FAP benefits based on a FAP budget that included a \$3,164 medical expense deduction (Exhibit A, pp. 15-75).

4. On December 5, 2019, the Department sent Petitioner a Notice of Overissuance informing him that he was overissued FAP benefits in the amount of \$3,912 during the period of April 1, 2018 through March 31, 2019 (Exhibit A, pp. 80-85).
5. On December 13, 2019, Petitioner submitted a request for hearing disputing the Department's actions.

### **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, Petitioner completed a redetermination on [REDACTED], 2019. In the redetermination, Petitioner reported that he did not have any out-of-pocket medical expenses.

As Petitioner qualifies as a senior/disabled/veteran (SDV) member, the group is entitled to deductions for verifiable medical expenses that the SDV member incurs in excess of \$35. BEM 554, p. 1. The Department will allow medical expenses when verification of the portion paid, or to be paid by insurance, Medicare, Medicaid, etc. is provided. BEM 554, p. 11. The Department will allow only the non-reimbursable portion of a medical expense. BEM 554, p. 11. Medical expense changes can be reported and processed during the benefit period, but the expenses must be verified. BEM 554, p. 9.

Despite the information provided by Petitioner, the Department continued to include a large medical expense deduction in Petitioner's FAP budget. The Department presented the FAP-Medical Expense Deduction report showing the medical expenses that were budgeted during each month of the overissuance period (Exhibit A, pp. 17-72). The Department stated that an ongoing insurance premium was budgeted during the entire overissuance period. The Department testified that Petitioner was not responsible for paying any insurance premiums during the overissuance period. The Department also stated that two one-time only expenses were miscategorized as ongoing expenses. The Department stated that during the overissuance period, Petitioner did not have any out-of-pocket medical expenses, and therefore, was not entitled to a medical expense deduction. The Department testified that Petitioner was overissued benefits for the period of April 1, 2018 through March 31, 2019, in the amount of \$3,912 due to Agency error.

When a client group receives more benefits that it is entitled to receive, the Department must attempt to recoup the overissuance. BAM 700 (October 2016), p. 1. An agency error is caused by incorrect action by the Department staff or department processes. BAM 700, p. 4. The amount of the overissuance is the benefit amount the group actually received minus the amount the group was eligible to receive. BAM 705 (January 2016), p. 6. If improper budgeting of income caused the overissuance, the Department will use actual income for the past overissuance month for that income source when determining the correct benefit amount. BAM 705, p. 8.

The Department presented a redetermination submitted by Petitioner on [REDACTED], 2019. In the redetermination, Petitioner did not indicate that he had any out-of-pocket medical expenses. Therefore, the Department properly determined that the overissuance was a result of Agency error.

The Department presented Petitioner's Benefit Summary, which showed he was issued \$ [REDACTED] in FAP benefits during the period of April 1, 2018 through March 31, 2019. The Department presented overissuance budgets for the period April 2018 through March 2019 (Exhibit A, pp. 15-75). The Department recalculated Petitioner's FAP benefits by removing the medical expense deduction. The budgets show that for the period of April 2018 through March 2019, Petitioner should have only received \$318 in FAP benefits.

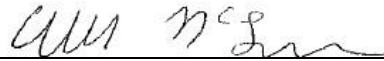
At the hearing, Petitioner alleged that during a portion of the overissuance period, he had submitted verified medical expenses that should have been included in the overissuance budgets. Petitioner stated that in 2019, he was transitioned from a full-coverage Medical Assistance (MA) program to a program with a deductible. Petitioner testified that when he began receiving MA benefits subject to a deductible, he started submitting his medical expenses. Petitioner was unsure as to when he was transitioned to a different MA program or when he began submitting medical expenses.

The Department submitted Petitioner's Eligibility Summary (Exhibit A, p. 102). The document shows that Petitioner was never under a full-coverage MA program. Petitioner was always under the Group 2 SSI-related MA program. However, Petitioner was subject to a deductible of \$0 until March 31, 2019. Effective April 1, 2019, Petitioner's deductible was increased to \$768. As Petitioner's deductible was \$0 prior to March 31, 2019, it would not have been necessary for him to submit medical expenses. Petitioner would have needed to begin submitting medical expenses effective April 1, 2019, when his deductible increased. Therefore, it is unlikely that Petitioner submitted any verified medical expenses prior to March 31, 2019. The overissuance period end date was March 31, 2019. Thus, the Department acted in accordance with policy when it did not include any medical expenses in the overissuance budgets. Therefore, the Department established it properly determined Petitioner was overissued FAP benefits in the amount of \$ [REDACTED]

**DECISION AND ORDER**

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 Petitioner received an overissuance of FAP benefits in the amount of \$[REDACTED]. Accordingly, the Department's decision is **AFFIRMED**.

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**Ellen McLemore**  
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

**Via Email:**

[REDACTED]

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

[REDACTED], MI [REDACTED]