



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: February 7, 2020  
MOAHR Docket No.: 19-013602  
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 January 29, 2020 from Detroit, Michigan. Petitioner appeared and represented himself. The Department of Health and Human Services (Department) was represented by Swanzetta Wilson, Recoupment Specialist, and Kendra Hall, Disability Specialist. During the hearing, a 37-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-37.

**ISSUE**

Did Petitioner receive a \$354 overissuance of Food Assistance Program (FAP) benefits from May 1, 2019 through June 30, 2019 that the Department is entitled to recoup and/or collect?

Did the Department properly determine Petitioner's FAP eligibility for the month of December 2019?

**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 from the Department.
2. In either late April 2019 or early May 2019, Petitioner incurred a medical expense of over \$10,000.

3. During the course of Petitioner's treatment, a Department worker stationed at the healthcare facility input a medical expense of \$11,555.75 into Petitioner's FAP budget and deemed it verified.
4. By including that into the budget, Respondent's FAP benefits increased to the maximum amount allowable for his group size.
5. At some point, the medical expense was removed as the Department deemed the expense to not be verified.
6. On December 12, 2019, the Department issued to Petitioner a Notice of Overissuance informing Petitioner that the Department was attempted to establish an overissuance of FAP benefits Petitioner received from May 1, 2019 through June 30, 2019, totaling \$354. The Department's correspondence indicated that the overissuance was on account of a Department error.
7. In December 2019, Petitioner received \$█ in FAP benefits. No portion of the medical expense was included in the budget.
8. On █, 2019, Petitioner submitted to the Department a request for hearing objecting to 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 submitted to the Department a hearing request objecting to the Department's efforts to establish that Petitioner received a \$354 agency error overissuance of FAP benefits from May 1, 2019 through June 30, 2019. Petitioner additionally objected to the Department's determination of his current FAP benefits for the month of December 2019. Essentially, both issues revolved around whether the Department properly removed a previously budgeted medical expense from Petitioner's FAP budget.

## OVERISSUANCE OF FAP BENEFITS

In this case, the Department is seeking to establish an alleged \$354 overissuance of FAP benefits issued to Petitioner from May 1, 2019 through June 30, 2019. The Department alleges that an overissuance was caused by the Department's error in budgeting an alleged medical expense incurred by Petitioner in May 2019. According to the Department's witness, the Department improperly budgeted that expense into the May 2019 and June 2019 budgets.

The Department designated the overissuance an agency error overissuance. In calculating the amount of the alleged overissuance, the Department removed the medical expense from the budgets for those two months and recalculated the benefits Petitioner supposedly should have received during the alleged overissuance period. The Department now seeks to recoup and/or collect from Petitioner the difference between what Petitioner's group received and what the Department believes Petitioner's group 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 (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.

In both May 2019 and June 2019, the Department issued to Petitioner \$█ in FAP benefits for a total of \$384. In determining Petitioner's monthly FAP amount for that time period, the Department included the medical expense that brought Petitioner's net income down to \$0. When the expense was removed from the budget, it was determined that Petitioner was only entitled to \$█ each month for a total of \$█ during that time period. Thus, the Department determined that Petitioner received an overissuance of FAP benefits totaling \$354.

When asked to explain the why the medical expense was budgeted in the first place, the Department witness testified that it was put into the system by a Department worker who worked in the hospital where Petitioner received the medical services. That worker was not present at the hearing, and the Department was unable to produce any of the documentation that may or may not have been submitted to that worker when the

worker made the determination that it was a valid medical expense to be included into the budget.

Petitioner is entitled to have medical expenses he incurs factored in as an expense to be applied to the calculation of his FAP benefit allotment. BEM 554 (October 2019), pp. 8-12. To include the expenses into the budget, the Department must first receive verifications that they meet the criteria. BEM 554, pp. 8-12.

In this case, the Department worker on site at the hospital made a determination that Petitioner's medical expenses incurred on site were sufficiently verified to be included into Petitioner's budget as an ongoing expense. Petitioner testified that he incurred such an expense at the time it was budgeted. For some reason, the Department subsequently reviewed Petitioner's case, determined that the expenses should not have been budgeted, removed those expenses from the budget, reduced Petitioner's current allotment of FAP benefits, then demanded Petitioner repay a portion of the benefits he received in May and June 2019. At no point during the process did the Department bother to seek verifications of the medical expenses at issue.

Based on the evidence presented, the Department failed to establish that Petitioner received an overissuance of FAP benefits from May 2019 through June 2019. The medical expense was put into the Department's system and deemed verified by the Department. Petitioner testified that he incurred the medical bill. The Department presented no good reason for the removal beyond testifying that it reviewed Petitioner's file and was unable to find the basis for the verification of the expense. In such a circumstance, the Department cannot simply deem the expense unverified and take negative action. After reviewing the record, the Department failed to meet its burden of proving that Petitioner received an overissuance of FAP benefits from May 1, 2019 through June 30, 2019.

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 failed to meet its burden of proving that Petitioner received an overissuance of FAP benefits from May 1, 2019 through June 30, 2019. The Department must delete the alleged overissuance.

#### **FAP ELIGIBILITY, DECEMBER 2019**

In this case, Petitioner sought a hearing to contest his present level of FAP benefits for the month of December 2019. Because the Department failed to continue to include the medical expense in Petitioner's budget without providing Petitioner the opportunity to verify the expense, the Department's determination must be reversed.

Petitioner is entitled to have medical expenses he incurs factored in as an expense to be applied to the calculation of his FAP benefit allotment. BEM 554, pp. 8-12. Groups may choose to budget a one-time-only medical expense for one month or average it over the balance of the benefit period. BEM 554, p. 9.

Petitioner's position is that he is getting shortchanged on the medical expense portion of his FAP budget. As stated above, Petitioner incurred a major medical expense in April 2019. At the time, a Department worker at the hospital location factored into Petitioner's FAP budget a medical expense of \$11,555.75. The most reasonable manner to budget that medical expense would be to average it out over the balance of the benefit period, as that would result in Petitioner receiving the most cumulative FAP benefits over that period.

Initially, the Department did budget the medical expense over at least two months. However, at some point, the Department deemed the expense not sufficiently verified and removed it from the budget. The critical flaw in the Department's action was that it did not seek to verify the expense before removing it from the budget.

Petitioner was found to have a large verified medical expense by the Department. He was entitled to have that factored into his budget properly unless and until the Department was able to make an informed decision that the expense was not legitimate. As the Department had already determined it was verified, the Department's new position that the expense was not verified and was not legitimate placed an eligibility-related factor into a state of being unclear, inconsistent, incomplete, or contradictory. In such instances, the Department is required to issue a verification checklist to the client requesting documentation related to the eligibility-related factor. BAM 130 (April 2017), p. 1. The Department's failure to do so precluded the Department from not factoring into Petitioner's FAP budget the previously determined to be verified medical expense. In failing to factor that expense into Petitioner's FAP budget for December 2019, the Department improperly deflated Petitioner's FAP allotment for that month.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined Petitioner's eligibility for FAP benefits for December 2019.

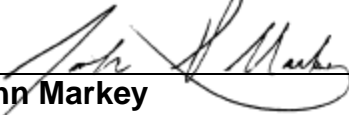
### **DECISION AND ORDER**

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

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. Delete the alleged overissuance of FAP benefits received by Petitioner from May 1, 2019 through June 30, 2019;
2. Redetermine Petitioner's FAP benefits for the month of December 2019 with the inclusion of that month's portion of the previously verified medical expense into the budget;
3. If Petitioner is found eligible for additional FAP benefits, ensure that a prompt supplement is issued; and
4. Notify Petitioner in writing of its decisions.

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**

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**DHHS Department Rep.**

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**Petitioner**

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

cc: FAP: M. Holden; D. Sweeney  
AP Specialist-Wayne County