



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: March 18, 2020  
MOAHR Docket No.: 20-001215  
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 March 11, 2020, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Bernice Ray, 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 Food Assistance Program (FAP) benefits during the period of March 1, 2019 through January 31, 2020 (Exhibit A, pp. 20-21).
2. On June 1, 2018, the Department began paying Petitioner's Medicare Part B premium expense (Exhibit A, p. 58).
3. On October 31, 2019, the Department received a Shelter Verification form stating that Petitioner was receiving in-home rent in the amount of \$ [REDACTED] effective July 2, 2019 (Exhibit A, p. 45).

4. On February 21, 2020, the Department sent Petitioner a Notice of Overissuance informing her that she was overissued FAP benefits in the amount of \$587 during the period of March 1, 2019 through January 31, 2020 (Exhibit A, pp. 46-51).
5. 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, the State of Michigan began paying Petitioner's Medicare Part B premium through the Medicare Savings Program (MSP) beginning June 1, 2018. Additionally, the Department received verification on October 31, 2019, that Petitioner was receiving in-home rental income effective July 2, 2019.

All countable earned and unearned income available to the client must be considered in determining a client's eligibility for program benefits. In-home rental is when a landlord rents out part of his/her own dwelling to another individual. BEM 504 (October 2019), p. 1. The Department counts the gross rent payment, minus expenses as earned income from self-employment. BEM 504, p. 2. The Department will allow the higher of 60 percent of the rental payment or actual rental expenses if the landlord chooses to claim and verify the expenses. BEM 504, p. 2. Additionally, as Petitioner qualifies as an 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.

Despite Petitioner's eligibility for MSP benefits, the Department continued to include Petitioner's Medicare Part B premium in her FAP budget during the period of March 1, 2019 through October 31, 2019 (Exhibit A, pp. 68-75). As such, the Department testified that Petitioner's FAP benefit amount was improperly calculated during that time period, as Petitioner was not entitled to that medical expense deduction. Additionally, the Department testified that Petitioner failed to timely report that she was receiving in-home rental income. As a result, the in-home rental income was not properly budgeted between the period of September 1, 2019 through January 31, 2020 (Exhibit A, pp. 61-

69). Therefore, Petitioner was overissued FAP benefits during the time period, as the rental income should have been included in Petitioner's FAP budget. The Department testified that the failure to remove the medical expense was a result of agency error. The overissuance related to the rental income was a client error, as Petitioner failed to report the income. However, the Department testified that since the agency error and client error time period overlapped, the entire overissuance period was designated as an 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 Petitioner's State Online Query Report (SOLQ) showing Petitioner's Medicare Part B buy in date was June 1, 2018. The Department also presented Petitioner's original FAP budgets showing she received a medical expense deduction for the Medicare Part B premium during the period of March 1, 2019 through October 31, 2019. As the State of Michigan was paying that expense, Petitioner was not entitled to the medical expense deduction. As such, the Department established Petitioner was overissued FAP benefits during that time period as a result of agency error.

The Department also presented a Shelter Verification submitted on October 31, 2019, showing that Petitioner was receiving in-home rental income as of July 2, 2019. The Department testified that Petitioner reported that the renter was living in her home until February 2020. At the hearing, Petitioner initially testified that the renter moved out of her home in December 2019. Then Petitioner changed her testimony and stated it was the end of January 2020. Petitioner then returned to her original testimony and stated he moved out and stopped paying rent in December 2019. Petitioner's testimony was too inconsistent to be considered credible. Therefore, the undersigned ALJ will only consider the Department's testimony that Petitioner reported the income stopped in February 2020. The Department provided the original FAP budgets showing the in-home rental income was not budgeted between the period of September 1, 2019 and January 31, 2020. Therefore, the Department properly determined Petitioner was overissued FAP benefits during that time period.

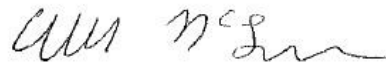
The Department presented Petitioner's Benefit Summary, which showed she was issued \$1,727 in FAP benefits for the period of March 1, 2019 through January 31, 2020. The Department presented overissuance budgets for the same time period (Exhibit A, pp. 22-44). The Department recalculated Petitioner's FAP benefits by adding in the in-home rental income and removing the medical expense deduction. The budgets show that for the period of March 1, 2019 through January 31, 2020, Petitioner

should have only received \$1,140 in FAP benefits. Therefore, the Department established it properly determined Petitioner was overissued FAP benefits in the amount of \$587.

**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 \$587. 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:**

MDHHS-Berrien-22-Hearings  
M. Holden  
D. Sweeney  
BSC3- Hearing Decisions  
MOAHR

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

