



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: June 4, 2020  
MOAHR Docket No.: 20-001936  
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 May 27, 2020, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Jennifer Braxmaier, 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 May 1, 2019 through January 31, 2020 (Exhibit A, pp. 41-42).
2. On January 6, 2019, Petitioner completed a redetermination related to her FAP benefit case where she reported that her household included her son (Exhibit A, pp. 4-6).
3. On January 29, 2019, the Department sent Petitioner a Notice of Case Action (NOCA) informing her that she was entitled to \$305 in monthly FAP benefits based on a group size of three (Exhibit A, pp. 10-15).

4. On March 13, 2019, Petitioner submitted a change report notifying the Department that her son moved out of her household on March 1, 2019 (Exhibit A, pp. 17-18).
5. On February 18, 2020, the Department sent Petitioner a Notice of Overissuance informing her that she was overissued FAP benefits in the amount of \$1,376 during the period of May 1, 2019 through January 31, 2020 (Exhibit A, pp. 45-50).
6. On February 27, 2020, 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 January 29, 2019. Petitioner reported that she was living with two individuals, one of which was her son. Petitioner's FAP benefit amount was based on a group size of three. On March 13, 2019, Petitioner reported that her son had moved out of her household as of March 1, 2019.

FAP budget calculations require the consideration of the group size. The Department will determine who must be included in the FAP group prior to evaluating the non-financial and financial eligibility of everyone in the group. BEM 212 (July 2019), p. 1. The FAP group composition is established by determining all of the following: who lives together, the relationship(s) of the people who live together, whether the people living together purchase and prepare food together or separately, and whether the person(s) resides in an eligible living situation. BEM 212, p. 6.

Despite the information provided by Petitioner, the Department continued to include Petitioner's son in her group composition between the period of May 1, 2019 through January 31, 2020. As such, the Department testified that Petitioner's FAP benefit amount was improperly calculated, as her FAP benefits should have been based on a group size of two. The Department testified that Petitioner was overissued benefits for the period of May 1, 2019 through January 31, 2020, in the amount of \$1,376 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.

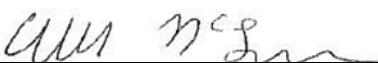
The Department presented the redetermination submitted by Petitioner on January 6, 2019. Petitioner reported her son was in the household. The Department also submitted the Notice of Case Action sent to Petitioner on January 29, 2019, showing that she was eligible for a monthly FAP benefit amount of \$305 based on a group size of three. The Department also presented the change report submitted by Petitioner on March 13, 2019, showing that she reported that her son was no longer in the household. The Department provided Petitioner's Benefit Summary Inquiry showing that Petitioner received FAP benefits based on a group size of three during the period of May 1, 2019 through January 31, 2020. As such, the Department correctly determined that Petitioner's FAP benefits were calculated using the incorrect group size, and she was overissued FAP benefits as a result of agency error.

The Department presented Petitioner's Benefit Summary Inquiry, which showed she was issued \$2,737 in FAP benefits for the period of May 1, 2019 through January 31, 2020. The Department presented overissuance budgets for the period May 1, 2019 through January 31, 2020 (Exhibit A, pp. 24-42). The Department recalculated Petitioner's FAP benefits by removing her son from the group. The budgets show that for the period of May 1, 2019 through January 31, 2020, Petitioner should have only received \$1,361 in FAP benefits. Therefore, the Department established it properly determined Petitioner was overissued FAP benefits in the amount of \$1,376.

### **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 \$1,376.

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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-Roscommon-Hearings  
MDHHS-Recoupment-Hearings  
M. Holden  
D. Sweeney  
BSC1- Hearing Decisions  
MOAHR

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

