



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: June 11, 2020
MOAHR Docket No.: 20-002084
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

HEARING DECISION

Upon the request for a hearing by the Department of Health and Human Services (Department), this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, and in accordance with Titles 7, 42 and 45 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16, 42 CFR 431.230(b), and 45 CFR 235.110, and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a telephone hearing was held on June 3, 2020, from Lansing, Michigan. The Department was represented by Assistant Attorney General, Neil Giovanatti, P#82305, and Annette Fullerton, Recoupment Specialist. Respondent was represented by herself and her Attorney, Richard Hagerstrom, P#57885.

ISSUE

Did Respondent receive an over-issuance (OI) of Food Assistance Program (FAP) benefits?

FINDINGS OF FACT

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

1. Respondent applied for FAP benefits with no reported assets except a checking account on [REDACTED], 2014. Department Exhibit 1, pgs. 7-27.
2. Respondent was approved for FAP benefits from the Department.
3. On April 28, 2015, Respondent submitted a Redetermination Application, DHS 1010 for FAP benefits with no reported assets except bank accounts. Department Exhibit 1, pgs. 28-33.

4. On May 3, 2016, Respondent submitted a Redetermination Application, DHS 1010 for FAP benefits with no reported assets except bank accounts. Department Exhibit 1, pgs. 34-39.
5. On April 27, 2017, Respondent submitted a Redetermination Application, DHS 1010 for FAP benefits with no reported assets except bank accounts. Department Exhibit 1, pgs. 40-47.
6. On April 30, 2018, Respondent submitted a Redetermination Application, DHS 1010 for FAP benefits with the [REDACTED] asset being reported with a balance of \$500 and bank accounts. Department Exhibit 1, pgs. 5-6 and 48-55.
7. On September 24, 2019, the Department became aware that Respondent was over the asset requirement for FAP benefits for at least 5 years. Department Exhibit 1, pg. 4.
8. On February 26, 2020, the Recoupment Specialist sent the Respondent a Notice of Overissuance, DHS 4358A, that due to an unreported [REDACTED] account beyond the \$5,000 asset limit for FAP during the period November 1, 2014, through May 31, 2018 that Respondent received an \$35,179 FAP OI. Department Exhibit 1, pgs. 62-69.
9. The Department alleges Respondent received a FAP OI during the period November 1, 2014, through May 31, 2018, due to **Respondent's** error. Department Exhibit 1, pgs. 56-60.
10. The Department alleges that Respondent received \$35,179 OI that is still due and owing to the Department. Department Exhibit 1, pgs. 56-60.
11. On March 9, 2020, the Department received a hearing request from Respondent, contesting the Department's negative action.

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), and Department of Health and Human Services Reference Tables Manual (RFT).

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 to .3015.

Additionally, Respondent applied for FAP benefits with no reported assets except a checking account on [REDACTED], 2014. Department Exhibit 1, pgs. 7-27. Respondent was approved for FAP benefits from the Department. On April 28, 2015, Respondent submitted a Redetermination Application, DHS 1010 for FAP benefits with no reported assets except bank accounts. Department Exhibit 1, pgs. 28-33. On May 3, 2016, Respondent submitted a Redetermination Application, DHS 1010 for FAP benefits with no reported assets except bank accounts. Department Exhibit 1, pgs. 34-39. On April 27, 2017, Respondent submitted a Redetermination Application, DHS 1010 for FAP benefits with no reported assets except bank accounts. Department Exhibit 1, pgs. 40-47.

On April 30, 2018, Respondent submitted a Redetermination Application, DHS 1010 for FAP benefits with the [REDACTED] asset being reported with a balance of \$500 and bank accounts. Department Exhibit 1, pgs. 48-55. On September 24, 2019, the Department became aware that Respondent was over the asset requirement for FAP benefits for at least 5 years. Department Exhibit 1, pg. 4. On February 26, 2020, Recoupment Specialist sent Respondent a Notice of Overissuance, DHS 4358A, that due to an unreported [REDACTED] account beyond the \$5,000 asset limit for FAP during the period November 1, 2014, through May 31, 2018, that Respondent received an \$35,179 FAP OI. Department Exhibit 1, pgs. 62-69.

According to the Department, the [REDACTED] account is not an excluded asset and must be counted in determining FAP eligibility. The Department alleges Respondent received a FAP OI during the period November 1, 2014, through May 31, 2018, due to **Respondent's** error. Department Exhibit 1, pgs. 56-60. The Department alleges that Respondent received \$35,179 OI that is still due and owing to the Department. Department Exhibit 1, pgs. 56-60. BAM 105, 115, and 715. BEM 400.

This Administrative Law Judge finds that Respondent failed to report the [REDACTED] account on her application for FAP benefits when she first applied on [REDACTED], 2014 and on every redetermination application after her initial application until April 30, 2018. Once the asset was reported, the Department made a determination that the asset was a countable asset and the Respondent was over the FAP asset limit. As a result, the Department is ordered to recoup the overissuance of FAP benefits that Respondent received in FAP benefits due to Respondent's error.

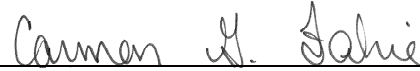
DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department **did** establish a FAP benefit OI to Respondent totaling \$35,179 for the contested time period of November 1, 2014, through May 31, 2018, due to **Respondent's** error.

Accordingly, the Department is **AFFIRMED**.

The Department is ORDERED to initiate collection procedures for a FAP \$35,179 OI in accordance with Department policy.

CF/hb



Carmen G. Fahie
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

Eaton County via electronic mail

BSC2 via electronic mail

M. Holden via electronic mail

D. Sweeney via electronic mail

DHHS Department Rep.

MDHHS-Recoupment via electronic mail

Counsel for Respondent

Neil A. Giovanatti, AAG via electronic mail

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Petitioner

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