



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: June 18, 2020  
MOAHR Docket No.: 20-002969  
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 June 11, 2020 from Detroit, Michigan. Petitioner appeared and represented himself. The Department of Health and Human Services (Department) was represented by Swanzetta Wilson, Recoupment Specialist. During the hearing, a 59-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-59.

### **ISSUE**

Did Petitioner receive a \$1,275 overissuance of Food Assistance Program (FAP) benefits from April 1, 2019 through March 31, 2020 that the Department is entitled to recoup and/or collect?

### **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. During the relevant time period, Petitioner properly reported to the Department his accurate eligibility-related information.
3. During the relevant time period, Department erroneously budgeted medical expenses far above what Petitioner actually received. The Department also budgeted housing expenses greater than what Petitioner reported, causing Petitioner's net income to be deflated.

4. On March 11, 2020, the Recoupment Specialist issued a Notice of Overissuance to Petitioner informing Petitioner that the Department determined Petitioner received a \$1,275 agency error overissuance of FAP benefits from April 1, 2019 through March 31, 2020.
5. On ██████████ 2020, Petitioner submitted to the Department a timely request for hearing objecting to the Department's efforts to establish an overissuance of FAP benefits.

### **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 Department is seeking to establish an alleged \$1,275 overissuance of FAP benefits issued to Petitioner from April 1, 2019 through March 31, 2020. The Department alleges that the overissuance was caused by the Department's error in failing to properly factor into Petitioner's FAP budget Petitioner's timely reported housing expenses and continuation of budgeting a one-time medical expense as a recurring monthly expense. The Department designated the overissuance an agency error overissuance. In calculating the amount of the alleged overissuance, the Department factored in income and proper expenses for the household to calculate the benefits Petitioner's group 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.

From April 1, 2019 through March 31, 2020, the Department issued to Petitioner FAP benefits on the basis of incorrect medical expense and housing expense information. When the correct information was included in the budget, it was determined that Petitioner received an overissuance of FAP benefits totaling \$1,275.

After reviewing the record, the Department has met its burden of proving that Petitioner received a \$1,275 overissuance of FAP benefits from April 1, 2019 through March 31, 2020 on account of the Department's failure to properly budget Petitioner's reported expenses. Petitioner's objections to the unfairness of the Department's actions in this case amount to equitable arguments. Unfortunately, the undersigned Administrative Law Judge does not have any equitable powers and must follow the law and Department policy, which compels the Department to seek to establish overissuances, even when those overissuances were caused by the Department's own errors, as was the case here.

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 that Petitioner received a \$1,275 Agency Error overissuance of FAP benefits from April 1, 2019 through March 31, 2020. The Department is entitled to initiate recoupment and/or collection activities for the overissuance, less any amounts already recouped and/or collected, pursuant to law and Department policy.

### **DECISION AND ORDER**

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

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**

LaClair Winbush  
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**DHHS Department Rep.**

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235 S Grand Ave  
Suite 1011  
Lansing, MI  
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**Petitioner**

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

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