



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR



Date Mailed: July 21, 2020  
MOAHR Docket No.: 20-003686  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Janice Spodarek

### **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 July 9, 2020.

Petitioner appeared unrepresented.

The Department of Health and Human Services (Department) was represented by Rebecca Smalley, Recoupment Specialist.

Department Exhibit A.49 was offered and admitted into the record.

### **ISSUE**

Did the Department properly determine that Petitioner was overissued 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. At all relevant times prior to the action herein, Petitioner was a beneficiary of the Food Assistance Program (FAP) and Medicaid (MA) programs.
2. On [REDACTED] 2019, Petitioner applied for State Emergency Relief (SER), reporting earned income, not previously reported or budgeted.
3. The Department failed to budget Petitioner's earned income reported July 9, 2019.

4. As a result of the Agency's failure to budgets Petitioner's reported income, Petitioner was overissued FAP benefits from August 1, 2019 through September 30, 2019, in the amount of \$384.00. The Department indicated that due to the Department's failing to timely process the OI, the Department was classifying the OI as an agency error even though Petitioner had not timely reported the income.
5. On April 2, 2020, the Department issued a Notice of OI in the amount of \$384.00 for the period from August 1, 2019 through September 30, 2019.
6. On April 17, 2020, Petitioner filed a hearing request.

### **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.

Applicable policy and procedure to the case herein is found at numerous manual items, found in BAM and BEM. Corresponding federal regulations are found at 7 CFR 273.18.

In this case, pursuant to income policy and corresponding federal regulations, the Department is required to count all income in calculating eligibility for the FAP program. In addition, federal and state law and corresponding policy requires the Department to recoup FAP benefits where benefits were issued in error, whether client or agency error, with certain exceptions not applicable herein. In fact, failure by the Department to collect any overpayments to FAP recipients, regardless as to whether they are client or agency error, can subject the State of Michigan to significant financial penalties.

Here, Petitioner did not dispute any of the calculations and/or budgets submitted by the Department herein. Rather, Petitioner makes an equitable argument that because it was agency error, it is unfair to collect from Petitioner. Here, Petitioner offered no law or policy that would allow the Department to deviate from the federal mandate to collect overissues, regardless as to whether they are client or agency error. The law and state policy will not allow an individual to prevail and keep more welfare benefits than they are entitled based on an error made by a Department employee. It is noted here that there is no dispute that the benefits were issued, and, that Petitioner did utilize the FAP benefits for her personal benefit.

In addition, as the Department is required to collect or recoup all overissuance, the undersigned has no power to deviate from policy or grant any equitable remedy.

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 was overpaid FAP benefits for the benefit period from August 1, 2019 through September 30, 2019.

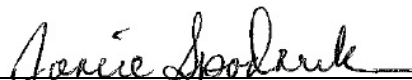
The Department may engage in any collection or recoupment as permitted by policy and procure, deducting any offsets already collected.

For these reasons and for the reasons stated on the record, the recoupment action is supported by credible evidence and, the Department did act in accordance with policy and federal regulations. 7 CFR 216.18.

**DECISION AND ORDER**

Accordingly, the Department's decision is AFFIRMED.

JS/ml



---

Janice Spodarek  
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 Department Rep.**

MDHHS-Recoupment – Via Electronic Mail

**DHHS**

Gladwin County DHHS – Via Electronic Mail

OIG – Via Electronic Mail

L. Bengel – Via Electronic Mail

**Petitioner**

[REDACTED] – Via First Class Mail

[REDACTED]  
MI [REDACTED]