



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: July 28, 2020  
MOAHR Docket No.: 20-003725  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Landis Lain**

### **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 15, 2020, from Lansing, Michigan. The Petitioner was represented by Petitioner [REDACTED]. The Michigan Department of Health and Human Services (Department or Respondent) was represented by Recoupment Specialist Bernice Ray.

Respondent's Exhibit A pages 1-77 were admitted as evidence.

### **ISSUE**

Did the Department properly propose to recoup overissued 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. The Department is requesting Administrative Recoupment of the Over Issuance amount of \$1,151.00 for the period of April 1, 2019 – March 31, 2020, established as an agency error.
2. Petitioner has at least two drug related felony convictions that occurred after August 22, 1996, she is permanently disqualified.

3. Petitioner did not indicate on Redetermination submitted on March 12, 2019, she had at least two drug related felony convictions (She indicated she had one).
4. Petitioner did indicate on DHS-1171 application submitted on [REDACTED], 2015, she had at least two drug related felony convictions.
5. Petitioner was informed of the Over Issuance on April 20, 2020, by Notice of Overrissuance, (4358A-D).
6. Petitioner requested a hearing on April 23, 2020.

### **CONCLUSIONS OF LAW**

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), Adult Services Manual (ASM), and 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.

Pertinent Department policy dictates:

#### **Criminal Justice Disqualifications**

People convicted of certain crimes and probation or parole violators are not eligible for assistance. BEM 203, p 1 (10/1/2015). An individual convicted of a felony for the use, possession, or distribution of controlled substances two or more times in separate periods will be permanently disqualified if both offenses occurred after August 22, 1996. BEM 203, p 2.

Effective January 1, 2016, the Department's OIG requests IPV hearings for the following cases:

- FAP trafficking OIs that are not forwarded to the prosecutor.
- Prosecution of welfare fraud or FAP trafficking is declined by the prosecutor for a reason other than lack of evidence, and
  - The total amount for the FIP, SDA, CDC, MA and FAP programs combined is \$500 or more, or

- the total amount is less than \$500, and
  - the group has a previous IPV, or
  - the alleged IPV involves FAP trafficking, or
  - the alleged fraud involves concurrent receipt of assistance (see BEM 222), or
  - the alleged fraud is committed by a state/government employee. BAM 720, pp 12-13 (1/1/2016).

In this case, Petitioner was convicted of CONTR SUBST/MAINTAIN LAB - MCL 333.7401C2A on October 4, 2002, and a probation violation on September 19, 2003, Possession of Meth.

Because Respondent's felony drug convictions occurred after August 22, 1996, Respondent was not eligible for FAP benefits. Therefore, Respondent received FAP benefits that she was not entitled to and received an Over-Issuance of \$1,151.00 in FAP benefits in this case.


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 proposed to recoup overissued FAP benefits in the amount of \$1,151.00.

### **DECISION AND ORDER**

The Administrative Law Judge based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, concludes that Respondent did receive an OI of FAP benefits in the amount of \$1,151.00.

Accordingly, the Department's decision is **AFFIRMED**. The Department is **ORDERED** to initiate recoupment procedures for the amount of \$1,151.00 in accordance with Department policy.

LL/hb

  
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**Landis Lain**  
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**

Van Buren County via electronic mail

BSC3 via electronic mail

M. Holden via electronic mail

D. Sweeney via electronic mail

MDHHS-OIG via electronic mail

**DHHS Department Rep.**

MDHHS-Recoupment via electronic mail

**Petitioner**

[REDACTED], MI [REDACTED]