



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.: 20-003740  
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 Department of Health and Human Services (Department or Respondent) was represented by Recoupment Specialist Rebecca Smalley.

### **ISSUE**

Did the Department properly determine that Petitioner must pay recoupment of overpaid 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. On March 1, 2006, a semiannual contact report was signed. Petitioner failed to list income in section four, household income.
2. On [REDACTED], 2006, a DHS-1171 assistance application was signed by Petitioner misrepresenting her circumstances of eligibility by reporting that she was self-employed as a daycare provider. Petitioner failed to report that she was employed at [REDACTED].
3. On October 12, 2006, a quarterly wage match was received in the local office reporting employment for Petitioner.

4. On December 19, 2006, and overissuance budget was calculated by recoupment specialist for both Family Independence Program benefits and Food Assistance Program benefits and a referral for full investigation was submitted to the office of inspector general.
5. The Office of Inspector General pursued prosecution. The prosecutor signed and accepted the case for prosecution on September 20, 2007.
6. On March 3, 2008, Petitioner signed disqualification and repay agreements and submitted them in the local office on March 4, 2008.
7. Petitioner pled guilty to welfare fraud, two counts on October 22, 2008, in the [REDACTED] in Saginaw County case number [REDACTED].
8. On December 10, 2008, Petitioner was sentenced.
9. On February 11, 2009, judgment of sentence was received with the Office of Inspector General disposition.
10. On February 12, 2009, the recoupment specialist entered the action into the Department of Health and Human Services System and mailed the notice of intentional program violation to Petitioner at 3126 Parkwood, Saginaw, MI 48601.
11. Petitioner received an over issuance of Food Assistance Program benefits in the amount of \$4,048 (current balance \$3,583.03) and received over issued Family Independence Program assistance in the amount of \$1,186 (current balance \$1,140) that was originally established as an intentional program violation error by the 70<sup>th</sup> district court in Saginaw County.
12. On April 24, 2020, Petitioner filed a request for hearing stating that she went to court back then and to her understanding she was told everything was dropped.
13. On July 15, 2020, the hearing was held. At the hearing, Respondent's Representative moved to dismiss the case for lack of jurisdiction and for lack of timeliness in the filing of the request for hearing.

### **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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of

Human Services) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101-.3131.

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.

MOAHR may grant a hearing about any of the following:

- Denial of an application and/or supplemental payments.
- Reduction in the amount of program benefits or service.
- Suspension or termination of program benefits or service.
- Restrictions under which benefits or services are provided.
- Delay of any action beyond standards of promptness.
- For FAP and CDC, the current level of benefits or denial of expedited service. (BAM 600)

The client or AHR has 90 calendar days from the date of the written notice of case action to request a hearing. The request must be received in the local office within the 90 days; see *Where to File a Hearing Request*, found in this item. Note: Unless otherwise stated elsewhere, computation of time for the purposes of administrative hearings is determined as follows:

- Time is measured in calendar days.
- The computation of time begins on the day after the act, event, or action occurs. (The day on which the act, event, or action occurred is not included.)
- The last day of the time period is included, unless it is a Saturday, Sunday, State of Michigan holiday, or day on which the State of Michigan offices are closed. (In such instances, the last day of the time period is the next business day.) BAM 600

In the instant case, this matter was litigated in the 70<sup>th</sup> Judicial District Court (Saginaw County). Petitioner pled guilty to two counts of Welfare fraud and signed a repayment agreement with the Department, to repay over-issued Food Assistance Program and Family Independence Program benefits.

The doctrine of Collateral Estoppel precludes re-litigation of an issue in a subsequent, different cause of an action between the same parties where the prior proceeding culminated in a valid, final judgment and the issue was actually litigated and necessarily determined. First, it must be clear that the action being estopped is between the same parties. Second, it must be clear the party being estopped had a full and fair opportunity to litigate the issue in question. And third, it must be clear that the basis of

the prior judgment can be ascertained clearly definitely and unequivocally. *People v. Gates*, 434 Mich. 146, 154-8 (1990).

The undersigned Administrative Law Judge finds that the Department of Health and Human Services' Motion for dismissal based upon lack of jurisdiction is **GRANTED**. The Request for Hearing is **DISMISSED** because the matter has already been fully adjudicated in the Saginaw County Circuit Court and because the Request for Hearing is **UNTIMELY**.

**IT IS SO ORDERED.**

LL/hb



**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**

Saginaw County via electronic mail

BSC2 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]  
[REDACTED], MI [REDACTED]