



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], MI [REDACTED]

Date Mailed: July 21, 2020  
MOAHR Docket No.: 20-003938  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Aaron McClintic

### **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 16, 2020, from Lansing, Michigan. The Petitioner appeared and testified. The Department of Health and Human Services (Department) was represented by Jennifer Braxmeier, Recoupment Specialist. Department Exhibit 1, pp. 1- 84 was received and admitted.

### **ISSUE**

Did the Department properly determine that Petitioner received an overissuance 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. Petitioner was a recipient of FAP benefits from the Department.
2. The Department alleges Petitioner received a FAP OI during the period June 1, 2019 through March 31, 2020, due to **client** error because Petitioner failed to disclose employment income.
3. The Department alleges that Respondent received \$4,295 OI that is still due and owing to the Department.
4. Petitioner testified that she reported her employment income by leaving a message for her case worker. Petitioner testified that there was a transition in how cases

were assigned during this time period and she never received a call back from her case worker.

5. The Department representative at hearing could not confirm or deny that the Department office was going through a transition regarding how case workers were assigned during the fraud period.

### **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.

### **AGENCY ERROR EXCEPTIONS FIP, SDA, CDC and FAP**

Agency error overissuances are not pursued if the estimated amount is less than \$250 per program. BAM 705

Additionally, Petitioner credibly testified that she reported her employment income by leaving a phone message. Petitioner testified that there was a transition taking place regarding how cases were assigned during the overissuance period. The Recoupment Specialist acknowledged that there was a transition in how cases were assigned and could not confirm or deny that his was taking place during the overissuance period. Therefore, the Department was failed to provide sufficient proof that the overissuance was due to client error. However, Department policy still requires recoupment for agency error if the overissuance is over \$250, which it is in this case. BAM 705 However, the overissuance is calculated differently for agency error so the Department must recalculate the overissuance.


The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department did not establish a FAP benefit OI due to client error.

**DECISION AND ORDER**

Accordingly, the Department is REVERSED.

The Department is ORDERED to recalculate the overissuance to reflect that the overissuance was due to agency error.

AM/nr

  
\_\_\_\_\_  
Aaron McClintic  
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  
235 S Grand Ave  
Suite 1011  
Lansing, MI  
48909

**DHHS**

Sheila Crittenden  
10641 W. Watergate Rd.  
Cadillac, MI  
49601

Wexford County DHHS- via electronic mail

OIG Hearings- via electronic mail

L. Bengel- via electronic mail

**Petitioner**

[REDACTED] - via first class mail  
[REDACTED]  
[REDACTED], MI  
[REDACTED]