



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

██████████  
██████████  
██████████, MI ██████████

Date Mailed: September 30, 2020  
MOAHR Docket No.: 20-005472  
Agency No.: ██████████  
Petitioner: ██████████ ██████████

**ADMINISTRATIVE LAW JUDGE:** Kevin Scully

### **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; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a telephone hearing was held on September 22, 2020. Petitioner represented herself. The Department was represented by Mary Peterson.

### **ISSUE**

Did the Department of Health and Human Services (Department) properly determine that Petitioner received an overissuance of Food Assistance Program (FAP) benefits that the Department is required 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. Petitioner was an ongoing Food Assistance Program (FAP) recipient on June 28, 2013, when the Department received her Redetermination (DHS-1010) form where she reported being responsible for dependent care expenses, along with verification of those expenses. Exhibit A, pp 11-16.
2. On August 6, 2013, the Department notified Petitioner that she was eligible for Food Assistance Program (FAP) benefits as a household of three, and her eligibility was based on the household being responsible for a \$300 monthly expense for dependent care. Exhibit A, pp 17-23.
3. On June 29, 2018, the Department received Petitioner's Redetermination (DHS-1010) form where she reported her household expenses, which no longer included an obligation to pay for dependent care expenses. Exhibit A, pp 24-32.

4. On July 2, 2018, Petitioner was interviewed, and the interview notes show that no dependent care expenses were reported during the interview. Exhibit A, pp 33-34.
5. On July 9, 2018, the Department received copies of Petitioner's paycheck stubs showing earned income in the gross weekly amounts of \$████ on June 15, 2018, \$████ on June 22, 2018, \$████ on June 29, 2018, and \$████ on July 6, 2018. Exhibit A, pp 112-113.
6. On July 9, 2018, the Department received a copy of a residential lease Petitioner entered on July 2, 2018, showing a base rent of \$360 per months. Exhibit A, pp 114-123.
7. On July 9, 2018, the Department received a copy of the summer and winter property tax obligations for Petitioner's home showing an annual property tax obligation of \$28.48. Exhibit A, pp 124-125.
8. On July 10, 2018, the Department notified Petitioner that she was eligible for Food Assistance Program (FAP) benefits as a household of five, and that the household was responsible for a \$300 monthly expense for dependent care, and a \$387.37 housing expense. Exhibit A, pp 37-42.
9. On December 20, 2018, the Department received Petitioner's Renew Benefits from where she reported no change of household expenses. This form was completed electronically, and it appears that dependent care expenses were pre-populated into the form. Exhibit A, pp 54-55.
10. On January 9, 2019, the Department notified Petitioner that she was eligible for Food Assistance Program (FAP) benefits as a household of five, and that the household was responsible for a \$300 monthly expense for dependent care and a \$387.37 housing expense. Exhibit A, pp 56-60.
11. On July 12, 2019, the Department notified Petitioner that she was eligible for Food Assistance Program (FAP) benefits as a household of five, and that the household was not receiving a deduction for dependent care expenses. Exhibit A, pp 69-75.
12. On July 12, 2019, the Department discovered that Petitioner had been receiving a deduction for dependent care expenses that she was not entitled to. Exhibit A, p 82.
13. On July 30, 2019, the Department received Petitioner's Redetermination (DHS-1010) form where she reported her household expenses, and dependent care expenses were not reported on the form. Exhibit A, pp 61-68.
14. Petitioner received Food Assistance Program (FAP) benefits totaling \$9,138 from August 1, 2018, through July 31, 2019. Exhibit A, pp 85-86.

15. On May 20, 2020, the Department notified Petitioner that she had received a \$1,254 overissuance of Food Assistance Program (FAP) during the period of August 1, 2018, through July 31, 2019, that would be recouped. Exhibit A, pp 128-133.
16. On May 27, 2020, the Department received Petitioner's request for a hearing protesting the recoupment of Food Assistance Program (FAP) benefits. Exhibit A, pp 5-9.

### **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) is funded under the federal Supplemental Nutrition Assistance Program (SNAP) established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 through 7 USC 2036a. It is implemented by the federal regulations contained in 7 CFR 273. The Department administers FAP pursuant to MCL 400.10 of the Social Welfare Act, MCL 400.1 *et seq*, and Mich Admin Code, R 400.3001 through 400.3011.

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. Department of Human Services Bridges Administrative Manual (BAM) 700 (October 1, 2018), p 1.

When benefits are issued to a client as a result of an incorrect action by the Department, the overissuance is known as agency error or department error. BAM 700, p 5.

For department errors, the overissuance period begins the first month when benefit issuance exceeds the amount allowed by policy, or 12 months before the date the overissuance was referred to the Department, whichever 12-month period is later. Department of Health and Human Services Bridges Administrative Manual (BAM) 705 (October 1, 2018), p 5.

Petitioner was an ongoing FAP recipient on June 28, 2013, when the Department received her Redetermination (DHS-1010) form where she reported being responsible for dependent care expenses. Petitioner provided verification of those expenses. On August 6, 2013, the Department notified Petitioner that she was eligible for ongoing FAP benefits, and that her benefits included a \$300 deduction for dependent care expenses.

On June 29, 2018, the Department received Petitioner's Redetermination (DHS-1010) form. At that time, Petitioner's circumstances had changed and there was no longer a need for her to pay for dependent care. Petitioner reported these changes on her Redetermination form, but due to department error, she continued to receive a

deduction for dependent care. Department records indicate that no dependent care expenses were reported during an interview on July 2, 2018.

On December 20, 2018, Petitioner submitted an electronic Renew Benefits form that had a prepopulated dependent care expenses listed on the form. The hearing record does not contain information that any attempt was made to verify expenses at that time, and Petitioner continued to receive a \$300 deduction for dependent care.

On July 12, 2019, the Department discovered that Petitioner had been receiving a \$300 monthly deduction for dependent care that could not be verified. It was determined that Petitioner had been receiving a \$300 monthly deduction for dependent care that she was not entitled to because the Department had improperly failed to remove this expense from her eligibility determination from the date she stopped paying those expense through July 12, 2019.

Petitioner received FAP benefits totaling \$9,138 from August 1, 2018, through July 31, 2019. If the Department had not mistakenly applied a \$300 dependent care expenses towards Petitioner's eligibility for FAP benefits, then she would have been eligible for only \$7,884 of those benefits. Therefore, Petitioner received \$1,254 of FAP benefits that she was not eligible for. Because the failure to remove the dependent care expenses was due to the Department's error, the Department is limited to recoup the FAP benefits Petitioner was not eligible for during the 12 months before the date the overissuance was referred to the Department as directed by BAM 705.

Petitioner testified that she reported when she was no longer responsible for dependent care expenses, but the Department concedes that the failure to remove those expenses from her eligibility determination was not the fault of Petitioner.

Petitioner testified that from August 1, 2018, through July 31, 2019, the Department also failed to apply her correct housing expenses towards her eligibility for FAP benefits.

The Department will verify housing expenses at application and when a change is reported. Housing expenses include rent, mortgage, a second mortgage, home equity loan, required condo or maintenance fees, lot rental or other payments including interest leading to ownership of the shelter occupied by the FAP group, but do not include optional expenses such as carports or pets. If the client fails to verify a reported change in shelter, the Department will remove the old expense until the new expense is verified. Department of Health and Human Services Bridges Eligibility Manual (BEM) 554 (October 1, 2019), p 14.

On June 29, 2018, Petitioner reported housing expenses of \$395 per month, but Department records indicate that a portion of those expenses were for pets. On July 10, 2018, July 21, 2018, and September 8, 2018, the Department notified Petitioner that she was receiving a deduction for housing expenses of \$387.37 per month.

On July 12, 2019, the Department discovered that Petitioner was receiving FAP benefits based on inaccurate expenses. Based on this information, the Department redetermined Petitioner's eligibility for FAP benefits.

The Department received copies showing Petitioner's actual income from June 15, 2018, through July 6, 2018. The Department determined Petitioner's prospective gross monthly income was \$[REDACTED] per month by multiplying her consistent gross weekly income of \$[REDACTED] by the 4.3 conversion factor as directed by BEM 505. Petitioner's income was not disputed during the hearing.

A copy of the residential lease Petitioner entered on July 2, 2018, shows that Petitioner was responsible for a base rent in the monthly amount of \$360. Property tax records show that Petitioner was responsible for property taxes in the annual amount of \$28.48. Petitioner's monthly property tax obligation was determined by dividing this amount by 12 months.

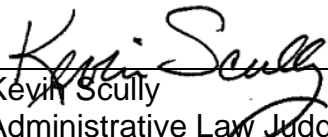
This Administrative Law Judge finds that the Department revised its determination of Petitioner's eligibility for FAP benefits based on her actual income and actual expenses, and that these amounts were verified by copies of documents provided to the Department on July 9, 2018. No evidence was presented on the record that these documents were not accurate or complete.

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 \$1,254 of Food Assistance Program (FAP) benefits that she was not eligible for because the Department mistakenly gave her credit for expenses that she did not actually have, and the Department is required to recoup those overissued benefits.

**DECISION AND ORDER**

Accordingly, the Department's decision is AFFIRMED.

KS/nr

  
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Kevin Scully  
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**

Garilee Janofski  
201 Commerce Dr  
Ithaca, MI  
48847

Gratiot County DHHS- via electronic mail

OIG Hearings- via electronic mail

L. Bengel- via electronic mail

**DHHS Department Rep.**

MDHHS-Recoupment- via electronic mail  
235 S Grand Ave  
Suite 1011  
Lansing, MI  
48909

**Petitioner**

██████████ - via first class mail  
██████████  
██████████, MI  
██████████