



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: November 2, 2020  
MOAHR Docket No.: 20-005871  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Colleen Lack

### **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 October 22, 2020. Petitioner, [REDACTED] appeared on her own behalf. The Department was represented by Jody Anderson, Recoupment Specialist.

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-30.

### **ISSUE**

Did the Department of Health and Human Services (Department) properly determine that Petitioner received Food Assistance Program (FAP) benefits that she was not eligible for and that must be recouped by the Department?

### **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 recipient of FAP through the Michigan Combined Application Project (MiCAP).
2. The MiCAP targeted population characteristics include individuals that receive SSI income and no other type of income. BEM 618, January 1, 2019, p. 1.
3. On October 13, 2017, Petitioner submitted a MiCAP Redetermination form. Petitioner reported she did not have any other income other than SSI. (Exhibit A, pp. 23-24)

4. On November 2, 2017, Notice of Case Action was issued to Petitioner stating FAP through the MiCAP program was approved effective December 1, 2017. The Notice also reminded Petitioner of the responsibility to report changes that may affect eligibility within 10 days, including changes with income. (Exhibit A, pp. 19-22)
5. Effective June 1, 2019, Petitioner began receiving RSDI benefits. (Exhibit A, pp. 16-18)
6. Petitioner received FAP benefits through the MiCAP program of \$100.00 per month from November 2019, through August 2020, totaling \$1,000.00. Supplemental FAP benefits of \$94.00 per month were also issued for March 2020, through August 2020. (Exhibit A, pp. 13-15)
7. The Department determined that Petitioner was not eligible for FAP benefits through the MiCAP program from November 1, 2019, through August 31, 2020. (Exhibit A, pp. 3 and 7-8)
8. On August 31, 2020, the Department sent Petitioner a Notice of Overissuance stating that a \$1,000.00 overissuance of FAP benefits occurred due to a client error. Specifically, Petitioner did not properly report receiving RSDI income when receiving FAP through the MiCAP program. (Exhibit A, pp. 7-12)
9. On September 16, 2020, the Department received Petitioner's unsigned Department and Client Error Information and Repayment Agreement. (Exhibit A, p. 5)
10. On September 17, 2020, the Department confirmed with Petitioner verbally that she was requesting a hearing to contest the recoupment of FAP benefits. (Exhibit A, p. 6)

### **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.

Pursuant to BAM 105, clients have a responsibility to cooperate with the Department in determining initial and ongoing eligibility. BAM 105, January 1, 2019, p. 9. Clients are responsible for reporting any changes in circumstance that potentially affect eligibility or benefit amount within 10 days of receiving the first payment reflecting the change. This includes changes with starting or stopping a source of unearned income. BAM 105, January 1, 2019, p. 12.

For FAP, the Department will act on a change reported by means other than a tape match within 10 days of becoming aware of the change. BAM 220, April 1, 2019, p. 7. A pending negative action occurs when a negative action requires timely notice based on the eligibility rules in this item. Timely notice means that the action taken by the department is effective at least 12 calendar days following the date of the department's action. BAM 220, April 1, 2019, p. 12.

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, October 1, 2018, p. 1.

Petitioner was an ongoing recipient of FAP through the Michigan Combined Application Project (MiCAP). The MiCAP targeted population characteristics include individuals that receive SSI income and no other type of income. BEM 618, January 1, 2019, p. 1.

On October 13, 2017, Petitioner submitted a MiCAP Redetermination form. Petitioner reported she did not have any other income other than SSI. (Exhibit A, pp. 23-24) On November 2, 2017, Notice of Case Action was issued to Petitioner stating FAP, through the MiCAP program, was approved effective December 1, 2017. The Notice also reminded Petitioner of the responsibility to report changes that may affect eligibility within 10 days, including changes with income. (Exhibit A, pp. 19-22)

Effective June 1, 2019, Petitioner began receiving RSDI benefits. (Exhibit A, pp. 16-18) The Department determined that Petitioner was not eligible for FAP benefits through the MiCAP program from November 1, 2019, through August 31, 2020, because SSI was no longer the only type of income Petitioner received. (Exhibit A, pp. 3 and 7-8) Accordingly, on August 31, 2020, the Department sent Petitioner a Notice of Overissuance stating that a \$1,000.00 overissuance of FAP benefits occurred due to a client error. Specifically, Petitioner did not properly report receiving RSDI income when receiving FAP through the MiCAP program. (Exhibit A, pp. 7-12)

Petitioner testified that she was still receiving SSI along with the RSDI. Additionally, Petitioner asserted that the total of her monthly income did not change. Petitioner indicated her SSI benefit decreased by the amount that was now being issued as RSDI benefits. Therefore, Petitioner did not think she had to report anything because her income did not change, and she was still eligible for SSI. (Petitioner Testimony)

BEM 618 addresses ongoing eligibility for MiCAP:

Once eligible, eligibility continues unless an individual:

- Loses SSI eligibility.

- Moves out of state.
- Is ineligible due to a change in the SSA living arrangement code.
- Dies.
- Becomes a mandatory member of another active FAP case.

**Exception:** An adult child, age 18-22, who meets the criteria under MiCAP Targeted Population, may receive MiCAP benefits even if living with parents.

**Example:** SSI individual has a baby and applies for food assistance benefits at a MDHHS local office. The SSI individual is a mandatory member of the baby's active FAP case so the MiCAP case must be closed.

BEM 618, January 1, 2019, p. 4.

Petitioner's testimony that she remained eligible for SSI is supported by the Department's verification of the RSDI and SSI benefits. (Exhibit A, pp. 16-17)

Further, Petitioner contests whether an overissuance of FAP benefits occurred even if she was no longer eligible to receive FAP through the MiCAP program when she began to receive RSDI benefits in addition to SSI benefits. The testimony of the Recoupment Specialist and Petitioner indicate Petitioner was likely eligible for regular FAP benefits during the overissuance period. (Recoupment Specialist and Petitioner Testimony) Petitioner noted that the amount of regular FAP benefits she began receiving as soon as the FAP through the MiCAP program ended is actually greater than the amount of FAP benefits she received through MiCAP. (Petitioner Testimony)

The Recoupment Specialist confirmed that the Department did not consider what Petitioner would have been eligible for in regular FAP benefits when calculating the overissuance. (Recoupment Specialist Testimony) It is noted that the Overissuance Summary stated that the overissuance was for the FAP program. (Exhibit A, p. 8) Accordingly, it does not appear that the Department properly calculated the alleged FAP overissuance in this case if they did not consider what Petitioner would have been eligible for in regular FAP benefits.

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 did not act in accordance with Department policy when it determined that Petitioner received a \$1,000.00 overissuance of FAP benefits that must be recouped.

**DECISION AND ORDER**

Accordingly, the Department's decision is **REVERSED**.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Delete the \$1,00.00 overissuance for the period of November 1, 2019, through August 31, 2020 and cease any recoupment action.

CL/ml



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Colleen Lack  
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**

Nicolette Vanhavel – via electronic mail  
235 S. Grand Ave., Ste. 1207  
Lansing, MI 48933

MDHHS OIG – via electronic mail

L. Bengel – via electronic mail

**Petitioner**

[REDACTED]  
MI [REDACTED]