



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

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██████, MI ██████

Date Mailed: November 17, 2020  
MOAHR Docket No.: 20-006483  
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 November 5, 2020. Petitioner represented herself and ██████ ██████ testified on her behalf. The Department was represented by Mary Peterson.

**ISSUE**

Did the Department of Health and Human Services (Department) properly determine that Petitioner had 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. On ██████ ██████ 2014, the Department received Petitioner's application for Food Assistance Program (FAP) benefits. Exhibit A, pp 8-38.
2. On June 24, 2014, the Department notified Petitioner that she was eligible for Food Assistance Program (FAP) benefits as a household of two receiving a gross monthly income of \$23. Exhibit A, pp 39-46.
3. On September 13, 2014, the Department requested that Petitioner provide verification of the relationship between the members of her household. Exhibit A, pp 47-48.
4. On September 24, 2014, the Department requested verification of household income. Exhibit A, pp 49-50.

5. On October 6, 2014, the Department received copies of the paycheck subs of a member of Petitioner's household. These paycheck stubs show that earned income in the gross weekly amounts of \$████ on August 29, 2014, \$████ on September 5, 2014, \$████ on September 12, 2014, \$████ on September 26, 2014, and \$████ on October 3, 2014. Exhibit A, pp 51-52.
6. The Department determined that the monthly prospective income was \$████ by converting the gross weekly paychecks of \$████ received on September 5, 2014, and \$████ received on September 26, 2014, by dividing the sum of those two paychecks by three and multiplying by the 4.3 conversion factor.
7. On October 9, 2014, the Department notified Petitioner that she was eligible for Food Assistance Program (FAP) benefits as a household of four with earned income in the gross monthly amount of \$████ and unearned income in the gross monthly amount of \$████ Exhibit A, pp 55-58.
8. A member of Petitioner's household receives monthly earned income from employment in the gross monthly amount of \$████ in November of 2014, \$████ in December of 2014, \$████ in January of 2015, \$████ in February of 2015, and \$████ in March of 2015, which was determined by multiplying the average weekly gross income in each month by the 4.3 conversion factor. Exhibit A, pp 175-218.
9. On March 11, 2015, the Department notified Petitioner that she was no longer eligible for Food Assistance Program (FAP) benefits as of April 1, 2015. Exhibit A, pp 72-75.
10. On March 25, 2015, an Overissuance Referral was processed based on household income not applied towards Petitioner's eligibility for benefits. Exhibit A, p 79.
11. Petitioner received Food Assistance Program (FAP) benefits totaling \$2,125 from November 1, 2014, through March 31, 2014. Exhibit A, p 159.
12. On September 23, 2020, the Department sent Petitioner a Notice of Overissuance instructing her that she had received a \$2,125 overissuance of Food Assistance Program (FAP) benefits that would be recouped. Exhibit A, pp 160-165.
13. On October 6, 2020, the Department received Petitioner's request for a hearing protesting the recoupment of Food Assistance Program (FAP) benefits. Exhibit A pp 5-7.

## 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.

All earned and unearned income available is countable unless excluded by policy. Earned income means income received from another person or organization or from self-employment for duties for duties that were performed for compensation or profit. Unearned income means all income that is not earned, including but not limited to funds received from the Family Independence Program (FIP), State Disability Assistance (SDA), Child Development and Care (CDC), Medicaid (MA), Social Security Benefits (RSDI/SSI), Veterans Administration (VA), Unemployment Compensation Benefits (UCB), Adult Medical Program (AMA), alimony, and child support payments. The amount counted may be more than the client actually receives because the gross amount is used prior to any deductions. Department of Human Services Bridges Eligibility Manual (BEM) 500 (July 1, 2017).

All income is converted to a standard monthly amount. If the client is paid weekly, the Department multiplies the average weekly amount by 4.3. If the client is paid every other week, the Department multiplies the average bi-weekly amount by 2.15. Department of Human Services Bridges Eligibility Manual (BEM) 505 (October 1, 2017), pp 7-8.

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.

On [REDACTED] [REDACTED] 2014, the Department received Petitioner's application for FAP benefits where she acknowledged the duties and responsibilities of receiving FAP benefits. On September 24, 2014, the Department requested verification of her household income. On October 6, 2014, the Department received copies of the paycheck stubs of a member of Petitioner's household. The Department calculated a prospective gross monthly income of \$[REDACTED] because the copies of the paycheck stubs were difficult to read. On October 9, 2014, the Department notified Petitioner that she was eligible for FAP benefits as a household of four receiving earned income in the gross monthly amount of \$[REDACTED] and unearned income in the gross monthly amount of \$[REDACTED]

Later, the Department would receive verification that the household actually received earned income in gross monthly amounts exceeding \$ [REDACTED] which was the monthly gross income limit for a household of four people, in each month from November 1, 2014, through March 31, 2014. Department of Health and Human Services Reference Table Manual (RFT) 250 (October 1, 2014), p 1. A household of four with a gross monthly income exceeding the monthly gross income limit is not eligible for any FAP benefits.

Petitioner received FAP benefits totaling \$2,125 as a household of four from November 1, 2014, through March 31, 2014. Those benefits were based on the household receiving earned income in the gross monthly amount of \$ [REDACTED]. If the Department had properly applied the actual household income towards their eligibility for benefits, then they would not have been eligible for any FAP benefits during that period. The Department concedes that the correct income figures were available to it, and that the overissuance of FAP benefits was caused by Department error.

Petitioner argued that she should not be responsible for the Department's errors. Petitioner argued that it was not fair for the Department to seek recoupment for an overissuance it caused when the benefits were issued so far in the past.


However, there is no entitlement to FAP benefits that Petitioner was not eligible for, and the Department is required to recoup overissuances of FAP benefits caused by its own failure to act. Administrative Law Judges have no authority to overrule promulgated regulations or make exceptions to the department policy set out in the program manuals. Further, even though the overissuance was discovered on March 25, 2015, and the Department did not notify Petitioner of the overissuance until September 23, 2020, the Department is required by federal regulations to establish claims even if they cannot be established within the normal regulatory timeframes. 7 CFR 273.18(d)(3).

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 a \$2,125 overissuance of FAP benefits due to Department error.

### **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

DHS 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  
██████████