



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: February 4, 2021  
MOAHR Docket No.: 20-007870  
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 January 28, 2021, from Lansing, Michigan. The Petitioner [REDACTED] self-represented at the hearing. The Department of Health and Human Services (Department or Respondent) was represented by Julie Luczak, Recoupment Specialist.

### **ISSUE**

Did the Department properly determine that Petitioner was overissued Food Assistance Program (FAP) benefits which must be recouped?

### **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 FAP benefit recipient.
2. The Department determined a FAP Client Error on behalf of Petitioner during the time period of April 1, 2020 – June 30, 2020.
3. This error is a result of the FAP group not properly reporting exceeding the simplified reporting (SR) limit of \$3,748.00.
4. During the FAP certification period, the SR limit was exceeded during the months of November 2019 (\$4,589.80), April 2020 (\$3,939.97), May 2020 (\$6,460.60), and June 2020 (\$4,289.00).

5. Recoupment Specialist (RS) applied policy BEM 715 to determine the first month of the overissuance (OI) as two months after the actual monthly income exceeded the simplified reporting (SR) limit.
6. If it does exceed the income limit again during the certification period and the client does not report, all months that exceeded the limit after the first two months would be recouped.
7. Recoupment Specialist verified earnings for [REDACTED] at Brunswick Corporation by using Equifax.
8. On December 4, 2020, RS established a FAP-CE OI Claim in the amount of \$2,509.00 on Claim #100007794098.
9. The Department determined that Petitioner was entitled to \$195.00 in FAP benefits for the month of April 2020.
10. The Department determined that Petitioner was entitled to \$0 in FAP benefits for the month of May 2020.
11. The Department determined that Petitioner was entitled to \$59.00 in FAP benefits for the month of June 2020.
12. On December 4, 2020, the Department sent Petitioner Notice of Overissuance in the amount of \$2,509.00 for client error for the months of April 1, 2020 – June 30, 2020.
13. Petitioner filed a Request for Hearing to contest the amount of overissuance.
14. On December 16, 2020, the Michigan Office of Administrative Hearings and Rules received a Hearing Summary and attached documents.

### **CONCLUSIONS OF LAW**

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a Department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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) [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.

Pertinent Department policy dictates:

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the over issuance. BAM 700, p 1 (1/1/2016).

Recoupment is a MDHHS action to identify and recover a benefit over issuance. A recoupment specialist (RS) is the specialist assigned to process over issuances and act as liaison with OIG, reconciliation and recoupment section (RRS), and other personnel involved with recoupment and collections. BAM 700 page 2

An agency error is caused by incorrect action (including delayed or no action) by MDHHS staff or Department processes. Some examples are:

- Available information was not used or was used incorrectly.
- Policy was misapplied.
- Action by local or central office staff was delayed.
- Computer errors occurred.
- Information was not shared between Department divisions such as services staff.
- Data exchange reports were not acted upon timely (wage match, new hires, BENDEX, etc.).

If unable to identify the type, record it as an agency error. FIP, SDA, CDC and FAP Agency errors are not pursued if the estimated amount is less than \$250 per program. BEM 700, page 5

A client error occurs when the client received more benefits than they were entitled to because the client gave incorrect or incomplete information to the Department. A client error also exists when the client's timely request for a hearing result in deletion of a MDHHS action, and any of the following occurred:

- The hearing request is later withdrawn.
- MAHS denies the hearing request.
- The client or administrative hearing representative fails to appear for the hearing and MAHS gives MDHHS written instructions to proceed.

- The hearing decision upholds the Department's actions; see BAM 600. BAM 700 page 7

When a potential over issuance is discovered the following actions must be taken:

1. Immediately correct the current benefits; see BAM 220, Case Actions, for change processing requirements.
2. Obtain initial evidence that an over issuance potentially exists.
3. Determine if it was caused by Department, provider or client actions.
4. Refer any over issuances needing referral to the RS within 60 days of suspecting one exists.

**Exception:** Office of Quality Assurance (OQA) discovered over issuances must be referred to the RS within 7 days of receipt of the OQA findings. OQA has already verified one exists. FIP, SDA, CDC and FAP Within 60 days of suspecting an over issuance exists, complete a DHS-4701, Over issuance Referral, and refer the following over issuances to the RS for your office:

- All client and agency errors over \$250.
- All suspected IPV errors.
- All CDC provider errors BAM 700 page 10.

BAM 715, page 5 indicates for Simplified Reporting that Bridges determines the first month of the overissuance as two months after the actual monthly income exceeded the simplified reporting (SR) limit. This accounts for the 10 days to report by the client, the 10 days for the specialist to act on the change and the 12-day negative action period; see BAM 200.

BAM 200 page 6 states in pertinent part:

The only client error overissuances related to simplified reporting that can occur for FAP groups in SR are when the group fails to report that income exceeds the group's SR income limit, or the client voluntarily reports inaccurate information. For failure to report income over the limit, the first month of the overissuance is two months after the actual monthly income exceeded the limit. Groups report if their actual income for a month exceeds 130 percent of poverty level. QC uses the actual income when determining whether a client should have reported; see BAM 715.

In this case, Petitioner did receive notice that Petitioner committed an error when she did not report that her income went above the Simplified Reporting calculation which resulted in her FAP benefits not being properly calculated from April 2020-June 30, 2020.

Petitioner testified that her income fluctuated, and she should not have to pay this entire amount back as it creates a hardship for her family. She stated she should not have to pay back the COVID emergency supplement because she was entitled to receive FAP benefits in the months of April 2020 and June 2020.

This Administrative Law Judge finds that the Department determined that Petitioner was entitled to receive \$195.00 in FAP benefits in the month of April 2020 and \$59.00 in the month of June 2020. The Department determined that Petitioner was not entitled to FAP benefits in the month of May 2020. She was given the Emergency COVID supplement for all three months in accordance with ESA 2020-15 which indicates:

Effective March 27<sup>th</sup>, MDHHS under the direction of the Federal government, will provide an emergency allotment to address temporary food needs due to COVID-19 pandemic-related economic conditions for up to two months. Michigan was previously approved to issue emergency allotments each month from April through September.

Active FAP groups who are not currently receiving the maximum benefit amount for their group size will receive a supplement to bring their benefit amount up to the maximum amount allowed for their group size. Groups already receiving the maximum monthly benefit amount **will not** receive an additional supplement based on Food and Nutrition Services.

Evidence on the record indicates that the Department has determined that Petitioner was entitled to receive FAP benefits in the months of April and June 2020. Therefore, Petitioner was entitled to receive the supplemental emergency COVID benefits for April and June 2020. Petitioner was not entitled to receive FAP benefits in the month of May 2020 because her income was too high. Thus, Petitioner received an over issuance of Food Assistance Program benefits in the amount of \$921.00 for May 2020 based upon the fact that Petitioner's income was not properly budgeted. The Department is required to recoup overissued 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 has established by the necessary competent, material and substantial evidence on the record that it acted in accordance with Department policy when it determined that Petitioner has been overissued FAP benefits in the amount of \$921.00 based upon client error for the month of May 2020 only, which must be recouped. Even if the error was made by the agency, the Department is compelled by Department policy to recoup any benefits in excess of the amount of \$250. The Department has established its case by a preponderance of the evidence.

### **DECISION AND ORDER**

Accordingly, the Department's decision recoup benefits for the month of May 2020 is **AFFIRMED**.

The Department is **ORDERED** to initiate the Recoupment process in the amount of \$921.00 for the month of May 2020 in accordance with Department policy within ten days of receipt of this Decision and Order.

LL/hb



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**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**

Ionia County via electronic mail

BSC3 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]