



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 17, 2021  
MOAHR Docket No.: 20-008083  
Agency No.: [REDACTED]  
Petitioner: [REDACTED] [REDACTED]

**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 February 10, 2021. Petitioner represented herself. The Department was represented by Rebecca Smalley.

### **ISSUE**

Did the Department of Health and Human Services (Department) properly determine that Petitioner received an overissuance of Food Assistance Program (FAP) benefits that 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. The Department received Petitioner's application for Food Assistance Program (FAP) benefits on [REDACTED] [REDACTED] 2018, where she acknowledged the duties and responsibilities of receiving Food Assistance Program (FAP) benefits including the duty to report all household income. Exhibit A, pp 156-162.
2. Petitioner reported on her [REDACTED] [REDACTED] 2018, application form that she was not employed and was receiving Supplemental Security Income (SSI) in the gross monthly amount of \$58. Exhibit A, p 160.
3. During an eligibility interview on November 29, 2018, Petitioner reported to the Department that her employment had ended and that she was receiving social security benefits. Department records indicate that a consolidated inquiry was performed. Exhibit A, p 154.

4. The Department received Petitioner's application for assistance dated February 18, 2019, where she acknowledged the duties and responsibilities of receiving Food Assistance Program (FAP) benefits including the duty to report all household income in a timely manner. Exhibit A, pp 149-153.
5. Petitioner reported on her [REDACTED] [REDACTED] 2019, application form that she was not employed and that she was receiving Supplemental Security Income (SSI) in the gross monthly amount of \$[REDACTED]. Exhibit A, p 152.
6. During an eligibility interview on February 20, 2019, Petitioner reported receiving Supplemental Security Income (SSI) in the gross monthly amount of \$772. Department records indicate that a consolidated inquiry was performed. Exhibit A, pp 147-148.
7. The Department received Petitioner's application for assistance dated April 23, 2019, where she acknowledged the duties and responsibilities of receiving Food Assistance Program (FAP) benefits including the duty to report all household income in a timely manner. Exhibit A, pp 141-146.
8. Petitioner reported on her [REDACTED] [REDACTED] 2019, application form that she was not employed and was not receiving any income. Exhibit A, pp 144-145.
9. On October 21, 2020, the Department received Petitioner's Redetermination (DHS-1010) form where she reported receiving Supplemental Security Income (SSI) in the gross monthly amount of \$783. Exhibit A, p 136-140.
10. Petitioner received unemployment compensation benefits in the gross bi-weekly amount of \$[REDACTED] on November 24, 2018, and in the gross bi-weekly amount of \$[REDACTED] from December 8, 2018, through March 30, 2019, and in the gross bi-weekly amount of \$[REDACTED] on April 13, 2019. Exhibit A, p 95-96.
11. Petitioner received earned income from employment in the gross quarterly amounts of \$[REDACTED] in the first quarter of 2017, \$[REDACTED] in the first quarter of 2018, \$[REDACTED] in the second quarter of 2018, \$[REDACTED] in the third quarter of 2018, and \$[REDACTED] in the fourth quarter of 2018. Exhibit A, p 98 and 101.
12. Petitioner received earned income from May of 2019, through April of 2020. Exhibit A, p 107.
13. Petitioner received earned income from April 11, 2019, through April 25, 2019. Exhibit A, pp 123-126.
14. Petitioner received earned income from October 21, 2016, through November 16, 2018. Exhibit A, pp 127-128.
15. As of December 1, 2018, Petitioner was receiving Food Assistance Program (FAP) benefits as a household of one receiving a total gross monthly income of \$118. Exhibit A, p 69.

16. Petitioner received Food Assistance Program (FAP) benefits totaling \$960 from December 1, 2018, through April 30, 2019. Exhibit A, p 25.
17. As of December 1, 2019, Petitioner was receiving Food Assistance Program (FAP) benefits as a household of one receiving a total gross monthly income of \$█████ Exhibit A, p 73.
18. As of October 1, 2020, Petitioner was receiving Food Assistance Program (FAP) benefits as a household of one receiving a gross monthly income of \$█████ Exhibit A, p 77.
19. Petitioner received Food Assistance Program (FAP) benefits totaling \$2,348 from December 1, 2019, through November 30, 2020. Exhibit A, pp 27-28.
20. On November 12, 2020, the Department issued a Overissuance Referral for a review of Petitioner's eligibility for Food Assistance Program (FAP) from November of 2018, and ongoing. Exhibit A, p 210.
21. On December 3, 2020, the Department sent Petitioner a Notice of Overissuance (DHS-4358) instructing her that she had received a \$867 overissuance of Food Assistance Program (FAP) benefits due to client error during the period of December 1, 2018, through April 30, 2019. Exhibit A, pp 11-16.
22. On December 3, 2020, the Department sent Petitioner a Notice of Overissuance (DHS-4358) instructing her that she had received a \$2,284 overissuance of Food Assistance Program (FAP) benefits due to agency error during the period of December 1, 2018, December 1, 2019, through November 30, 2020. Exhibit A, pp 17-22.
23. On December 15, 2020, the Department received Petitioner's request for a hearing protesting the recoupment overissued of Food Assistance Program (FAP) benefits received during the period of December 1, 2019, through November 30, 2020. Exhibit A, pp 6-7.
24. On December 17, 2020, the Department received Petitioner's request for a hearing protesting the recoupment of overissued Food Assistance Program (FAP) benefits received during the period of December 1, 2018, through April 30, 2019. Exhibit A, pp 8-10.

### **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.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount within 10 days of receiving the first payment reflecting the change. Changes that must be reported include all household income. Department of Human Services Bridges Assistance Manual (BAM) 105 (July 1, 2020), pp 1-20.

On [REDACTED] [REDACTED] 2018, the Department received Petitioner's application for FAP benefits where she acknowledged the duties and responsibilities of receiving FAP benefits including the duty to report all household income in a timely manner. Petitioner reported on her [REDACTED] [REDACTED] 2018, application form that her only source of income was SSI benefits. On November 29, 2018, Petitioner reported to the Department that her employment had recently ended and that her only source of income was social security benefits.

Petitioner received FAP benefits as a household of one from December 1, 2019, through April 30, 2019, as a household of one receiving a gross monthly income of \$[REDACTED]. Petitioner failed to report that her employment had not ended, and that she continued to receive earned income. Petitioner also failed to report that she was receiving unemployment compensation benefits. Petitioner's actual income during this period significantly exceeded \$785.

Petitioner received FAP benefits totaling \$960 from December 1, 2019, through April 30, 2019. If Respondent had accurately reported all of her household income in a timely manner, then she would have been eligible for only \$93 of those benefits. Therefore, Petitioner received a \$867 overissuance of FAP benefits as a result of her failure to report all household income.

Department records indicate that the Department checked its electronic databases for income before the November 29, 2018, eligibility interview. The results of this search of the data exchange information were apparently not recorded. The hearing record supports a finding that the income Petitioner received as a chore provider and her unemployment compensation benefits were discoverable to the Department at that time. Although Petitioner had reported that her earned income as a chore provider had ended, the hearing record does not contain any evidence supporting a finding that Petitioner requested that Petitioner verify her ending income.

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.).

Department of Health and Human Services Bridges Administrative Manual (BAM) 700 (October 1, 2018), p 5.

Although Petitioner failed to report all of her income and this resulted in an overissuance of FAP benefits, this Administrative Law Judge finds that the Department's failed to act upon data exchange reports that were available to the Department. Therefore, the benefits that were overissued from December 1, 2018, through April 30, 2019, fit the definition of department error or agency error.

On [REDACTED] [REDACTED] 2019, the Department received Petitioner's application for FAP benefits where she again acknowledged her duty to report household income. Petitioner reported on her [REDACTED] [REDACTED] 2019, application form that her only source of income was SSI benefits. During an eligibility interview on February 20, 2019, Petitioner reported that her only source of income was SSI benefits.

On [REDACTED] [REDACTED] 2019, the Department received another application for assistance where Petitioner reported that she was not employed. On a Redetermination form received by the Department on October 21, 2020, Petitioner reported that she was receiving SSI as her sole source of income.

Petitioner failed to report to the Department that she was receiving income as a chore provider and as a childcare provider. Although this income was not reported to the Department on any of her application forms or during eligibility interviews, this income was discoverable by the Department and should have been identified from its data exchange reports. Department records indicate that reports from these consolidated reports were requested for eligibility interviews that were conducted.

Petitioner received FAP benefits totaling \$2,348 from December 1, 2019, through November 30, 2020. If Petitioner had accurately reported her income, or the Department had identified this income using the same databases that it used to determine the overissuance of benefits, then Petitioner would have been eligible for only \$64 of those benefits. Therefore, Petitioner received a \$2,284 overissuance of FAP benefits due to department error or agency error.

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

The hearing record supports a finding that Petitioner received FAP benefits that she was not eligible for, and that she would not have received those benefits if she had accurately reported all of her income when she was given the opportunity to do so.

However, the hearing record also supports a finding that the unreported income would have been identified if the Department had properly reviewed the information that was available to it at the time Petitioner's eligibility for benefits was determined. There is also evidence to suggest that Petitioner received benefits she was not eligible for from May 1, 2019, through November 30, 2019, but that the exact amount of those benefits could not be determined because the amount of income Petitioner received during that period could not be determined.

The hearing record supports a finding that this is one instance of overissued FAP benefits and that all of the overissued FAP benefits can be attributed to department error. Therefore, the Department is limited to recover overissuance benefits only for the later 12-month period, as directed by BAM 705.

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 an overissuance of Food Assistance Program (FAP) benefits identified by Claim # [REDACTED] but did not act in accordance with Department policy when it determined that the Department is entitled to recoup the overissuance of Food Assistance Program (FAP) benefits identified in Claim # [REDACTED]

**DECISION AND ORDER**

Accordingly, the Department's decision is **AFFIRMED** in part and **REVERSED** in part.

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. The Department is ORDERED to delete the OI and cease any recoupment action for Claim # 100007792610.
2. The Department is ORDERED to initiate recoupment procedures for Claim # [REDACTED] the amount of \$2,284 in accordance with Department policy.

KS/nr

  
\_\_\_\_\_  
Kevin Scully  
Administrative Law Judge  
for Elizabeth Hertel, 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**

Elisa Daly  
411 East Genesee  
PO Box 5070  
Saginaw, MI  
48607

Saginaw 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  
██████████