



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: April 19, 2021  
MOAHR Docket No.: 20-008876  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Janice Spodarek**

**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 conference hearing was held on April 14, 2021.

Petitioner appeared unrepresented.

The Department of Health and Human Services (Department) was represented by Eugene Brown, Recoupment Specialist.

Department Exhibit A.93 was offered and admitted into the record.

**ISSUE**

Did the Department properly determine that Petitioner was overissued Food Assistance Program (FAP) program benefits?

**FINDINGS OF FACT**

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. At all relevant times, Petitioner was a beneficiary of the FAP program in a group of three.
2. On July 24, 2020, the Department issued a Notice of Overissuance to Petitioner indicating that Petitioner was overissued \$ [REDACTED] in FAP benefits from October 1, 2019 to July 31, 2020 due to client error.

3. The Department became alerted to previously unbudgeted RSDI income pursuant to an SOLQ from the Social Security Administration indicating that Petitioner and her daughters began receiving RSDI income beginning August 1, 2019.
4. On August 13, 2020 Petitioner filed a hearing request.

### **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) [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.

Applicable policy items to the issue in this case are found at BAM 105, 220, 700, 715, 725; BEM 500, 501, 550, 554, and 556. Corresponding federal regulations are found at 7 CFR 273.18 primarily, also see 7 CFR 273.10.

First, it is noted that the Department initially motioned to dismiss Petitioner's hearing request on the basis that the [REDACTED] 2020 hearing request was untimely. However, federal and state law allows an individual 90 days from the date of the Notice of Case Action. This jurisdictional limit is clearly noted in the July 24, 2020 Notice of Overissuance. Exhibit A.11. The Department confuses the impact of adequate and timely notice, which may impact whether the Department reinstates benefits pending the outcome of the administrative hearing. Requesting a hearing outside the timely notice window of 10 days will not bar an appellant from requesting a hearing within the 90-day jurisdictional window. Thus, there is jurisdiction in this matter to proceed with a substantive review.

Here, unrefuted evidence of record is that pursuant to SSA verification, the RSDI income began with the month of August 2019. Pursuant to a July 9, 2020 data entry, the Department was not aware of the RSDI income beginning until July 9, 2020. The Department did not begin to budget the income until October, 2019. Thus, the Department argues, FAP budgets do not show any eligibility for a group of three and thus, the overissuance was calculated by the ten months times the entire allotment, or \$ [REDACTED]

Petitioner argues that she did not actually receive August and September 2019 SSA benefits until October 2019. Petitioner argues further that the error is agency error as she did report in October 2019.

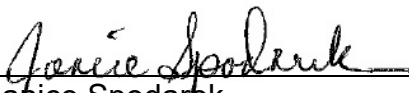
Here, Petitioner presented no evidence of having reported in October 2019. However, it is noted that even if she had, it is unrefuted that the income was not correctly budgeted. Thus, even if the error were to be reclassified as agency error (of which there is no evidence), the outcome here would be the same--Federal and state law requires the Department to collect any benefits ineligibly received in either case. Failure to recoup or collect could subject the State of Michigan to significant financial penalties. Petitioner cannot prevail in her argument that she is entitled to keep more benefits than she was entitled to on the basis of an error, even if there were evidence of agency error here.

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 was overissued FAP benefits.

**DECISION AND ORDER**

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

JS/ml

  
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Janice Spodarek  
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**

Jackie Stempel  
Muskegon County DHHS – via electronic mail

BSC3 – 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  
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