



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.: 21-000058  
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 hearing was held on February 11, 2021.

Petitioner personally appeared and testified unrepresented. The Department of Health and Human Services (Department) was represented by Kathleen Zewatsky, Recoupment Specialist.

Department Exhibit A.58 was offered and submitted into evidence.

### **ISSUE**

Did the Department properly determine that Petitioner was overissued FAP 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 has been a beneficiary of the FAP program.
2. After Petitioner's FAP redetermination on or about December 2019, Petitioner reported earned income not previously budgeted in Petitioner's FAP budget.
3. The Department failed to adjust Petitioner's benefits until July 2020, finding that Petitioner received an overissuance of FAP benefits due to agency error in the amount of \$1,424.00.

4. On December 14, 2020, the Department issued a Notice of Overissuance informing Petitioner that due to agency error, Petitioner was overissued \$1,424.00 in FAP benefits from November 2019 through June 2020.
5. On January 7, 2021, 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.

Individuals asserting eligibility for welfare benefits have the burden of proof by a preponderance of evidence. Here, that burden falls on Petitioner.

The purview of an Administrative Law Judge is to review the Department's action, and, to decide if the evidence of record supports that action taken by the Department. After the Department meets its burden of going forward, Petitioner has the burden of proof to show that the action is not supported by the evidence and is contrary to law or policy. ALJs do not have any jurisdiction to deviate from law or policy due to individual circumstances.

Here, the Department argues that while the overissuance did not result due to any fault of Petitioner, nevertheless, federal and state law require the Department to collect any amounts that exceed the amount a beneficiary would otherwise be eligible for. BAM 700-715. Corresponding federal regulations are found at 7 CFR 273.18.

Here, the Department argues that under BAM and corresponding federal regulations, the Department is required to collect all overissuance, regardless as to whether such results from client or agency error.

Petitioner argues that she reported her income, and that she did not error. Rather, the Petitioner argues that because the agency erred, she should not have to pay back any benefits as she did not wrong.

Unrefuted evidence here is that the error was agency error. Unrefuted evidence further shows that Petitioner did receive more benefits than she should have had the

Department properly budgeted the income timely. Evidence also shows that Petitioner cashed in those benefits and utilized the food benefits.

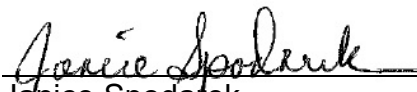
Petitioner contends the error was not her fault. Petitioner is correct. However, Petitioner offered no law or policy that would entitle her to keep overissued benefits due to Department error. The State of Michigan can be subject to significant financial penalties for failure to collect on overissuance, regardless as to whether they are client or agency error. Petitioner received more than she is entitled to.

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 issued notice of recoupment on overissued FAP benefits due to agency error.

**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 Department Rep.**

MDHHS-Recoupment – via electronic mail

**DHHS**

Tamara Little  
Jackson County DHHS – via electronic  
mail

BSC4 – via electronic mail

**Petitioner**

██████████ – via first class mail  
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