



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
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MI [REDACTED]

Date Mailed: March 4, 2021  
MOAHR Docket No.: 21-000239  
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, an administrative hearing was held on February 24, 2021.

Petitioner personally appeared and testified unrepresented.

The Department of Health and Human Services (Department) was represented by Latoi Patillo, Overpayment Specialist.

Department Exhibit A.78 was offered and admitted into evidence.

**ISSUE**

Did the Department properly calculate a FAP overissuance due to client error?

**FINDINGS OF FACT**

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

1. In January 2020, pursuant to a wage date match, the Department became alerted to earned income previously not reported by a member of Petitioner's FAP group, her son.
2. On January 7, 2021, the Department issued a Notice of Overissuance informing Petitioner that her FAP group received an overissuance from May 1, 2020 to November 30, 2020, totaling \$3,434.00 due to client error.

3. Unrefuted evidence of record is that Petitioner failed to report on an April 2020 redetermination form that her son was working.
4. For each month during the overissuance period, Petitioner was issued \$509.00 in FAP benefits and eligible for \$0.00, except for May 2020, when Petitioner was eligible for \$129.00.
5. On January 19, 2021, Petitioner signed the overissuance repayment agreement but filed an appeal on the calculation.

### **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.

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 burden of proof to show that the action is not support 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.

Applicable policy is found at BAM 105, 210, 700-725; BEM 213, 500-556. Corresponding federal regulations are found at 7 CFR 273.4, 273.10, 273.14, and 273.18.

In this case, Petitioner argues that she should have the COVID 19 supplement for each month deducted from her overissuance. The Department argues that beneficiaries were not eligible for a COVID 19 supplement unless they had some eligibility in the month at issue.

Evidence here shows that from April 2020 to November 2020 Petitioner was eligible for \$0.00 benefits. Thus, there could be no COVID 19 supplement under these facts as Petitioner was not eligible for any FAP benefits.

The only remaining month is the month of May 2020. That month, Petitioner was eligible

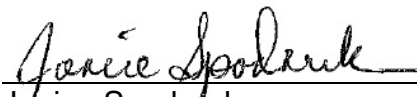
for \$129.00 after budgeting previously unreported earned income by Petitioner for a member of her FAP group. The Department testified that instruction from the Department is that no FAP COVID supplement is given when the beneficiary failed to accurately and correctly report for the FAP month. In addition, Petitioner's testimony at the administrative hearing raised an additional issue Petitioner's daughter who was a member of Petitioner's FAP group but actually residing out of the home which the Department was not previously aware of. The Department argued that Petitioner's failure to report is egregious. To this extent, the Department makes an unclean hands legal argument, which may not entitle the Respondent to equity, nevertheless, by analogy, weighs the evidence against Petitioner's argument. In the alternative, Petitioner offered no authority, no law or policy that would entitle her to prevail neither for the month of May 2020 nor for June 2020 through November 2020. Thus, the Department is upheld.

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 calculated an overissuance of FAP benefits in the amount of \$3,434.00.

**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

