



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: March 30, 2021  
MOAHR Docket No.: 21-000969  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Colleen Lack**

**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 March 24, 2021. [REDACTED] the Petitioner, appeared on her own behalf. The Department of Health and Human Services (Department) was represented by Kathleen Zewatsky, Recoupment Specialist.

During the hearing proceeding, the Department’s Hearing Summary packet was admitted as Exhibit A, pp. 1-65.

**ISSUE**

Did the Department properly determine that Petitioner received Food Assistance Program (FAP) benefits that she was not eligible for and 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 is an ongoing recipient of FAP benefits.
2. On September 10, 2018, Petitioner submitted a Redetermination form, in part reporting income from [REDACTED] (Exhibit A, pp. 57-64)
3. Petitioner’s income from work at [REDACTED] was not countable in the FAP budget because it was [REDACTED] employment. (Exhibit A, p. 3; Recoupment Specialist Testimony)
4. On October 8, 2018, a Notice of Case Action was issued to Petitioner stating FAP was approved for [REDACTED] per month from [REDACTED] 2018 through [REDACTED] 2020. A budget summary was included showing no earned income

was included in the FAP budget. Petitioner was reminded of the responsibility to report changes, including changes in employment, within 10 days. (Exhibit A, pp. 27-30)

5. On [REDACTED] 2019, Petitioner applied for FAP and reported she was still working for [REDACTED] SCSEP. (Exhibit A, pp. 51-56)
6. Petitioner stopped working for [REDACTED] on November 4, 2019. (Exhibit A, p. 41)
7. On November 4, 2019, Petitioner began working for [REDACTED]. Petitioner's first paycheck was November 15, 2019. (Exhibit A, pp. 33-39)
8. On December 7, 2019, a Notice of Case Action was issued to Petitioner stating FAP was approved for [REDACTED] per month from [REDACTED] 2019 through [REDACTED] 2020. A budget summary was included showing no earned income was included in the FAP budget. Petitioner was reminded of the responsibility to report changes, including changes in employment, within 10 days. (Exhibit A, pp. 22-26)
9. The Recoupment Specialist verified that Petitioner's work at [REDACTED] was regular employment, rather than [REDACTED] employment. (Exhibit A, p. 3; Recoupment Specialist Testimony)
10. On [REDACTED] 2020, Petitioner applied for FAP and MA and reported she was laid off and receiving unemployment income due to COVID-19. (Exhibit A, pp. 44-50)
11. On September 17, 2020, the Department sent Petitioner a Notice of Overissuance instructing her that a [REDACTED] overissuance of FAP benefits occurred from [REDACTED] 2020 through [REDACTED] 2020 and would be recouped. (Exhibit A, p. 8)
12. On February 25, 2021, the Department received Petitioner's verbal request for a hearing protesting the recoupment of FAP benefits, noting that Petitioner stated she previously mailed in a hearing request. (Exhibit A, p. 5)
13. On March 2, 2021, a Quick Note was issued to Petitioner stating that although she received regular FAP benefits to which she was not entitled, the Department has issued Emergency Allotment benefits in the amount of the overpaid regular benefits, resulting in the Department reducing the overpayment claim to \$337.00. (Exhibit A, pp. 7 and 14)
14. Petitioner received FAP benefits of [REDACTED] per month for [REDACTED] and [REDACTED] 2020. (Exhibit A, p. 17)
15. The Department determined that Petitioner received a total of [REDACTED] of FAP benefits but was only eligible for [REDACTED] of FAP benefits from [REDACTED] 2020 through [REDACTED] 2020. (Exhibit A, pp. 17-21)

## 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.

Pursuant to BAM 105, clients have a responsibility to cooperate with the Department in determining initial and ongoing eligibility. Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105, October 1, 2019, p. 9. Clients must also report changes in circumstance that potentially affect eligibility or benefit amount within 10 days. This includes any changes with income. (BAM 105, pp. 11-14)

For FAP, the Department will act on a change reported by means other than a tape match within 10 days of becoming aware of the change. BAM 220, April 1, 2020, p. 7. A pending negative action occurs when a negative action requires timely notice based on the eligibility rules in this item. Timely notice means that the action taken by the department is effective at least 12 calendar days following the date of the department's action. BAM 220, p. 12.

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, October 1, 2018, p. 1. An agency error is caused by incorrect action (including delayed or no action) by MDHHS staff or department processes, such as when available information was not used. Agency errors are not pursued if the estimated amount is less than \$250 per program. BAM 700, p. 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. BAM 700 p. 7.

In this case, the Department determined that Petitioner received a total of [REDACTED] of FAP benefits but was only eligible for [REDACTED] of FAP benefits from [REDACTED] 2020 through [REDACTED] 2020. (Exhibit A, pp. 17-21)

The Department explained that Petitioner's prior employment income from work at [REDACTED] was not countable in the FAP budget because it was [REDACTED] employment. (Exhibit A, p. 3; Recoupment Specialist Testimony) However, Petitioner stopped working for [REDACTED] on November 4, 2019. (Exhibit A, p. 41) On November 4, 2019, Petitioner began working for [REDACTED] Petitioner's

first paycheck was November 15, 2019. (Exhibit A, pp. 33-39) The Department asserted that Petitioner failed to report this change in employment. The Recoupment Specialist verified that Petitioner's work at [REDACTED] was regular employment, rather than [REDACTED] employment. Therefore, the income from employment with [REDACTED] should have been included in the FAP budget. (Exhibit A, p. 3; Recoupment Specialist Testimony)

Petitioner testified that she had not wanted to stop working at [REDACTED] through [REDACTED]. However, her hours had been reduced and she needed to earn more money. Petitioner previously worked at [REDACTED] through [REDACTED] but it did not occur to her that this time it would be considered regular employment. (Petitioner Testimony)

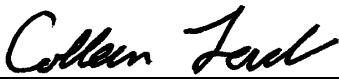
Overall, the evidence supports the Department's determination that Petitioner received an overissuance of FAP benefits from January 1, 2020 through February 29, 2020. When Petitioner started working at [REDACTED] in November 2019, it was as a regular employee, not [REDACTED] employment. Therefore, this income should have been included in the FAP budget.

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 a \$337.00 overissuance of FAP benefits that must be recouped.

### **DECISION AND ORDER**

Accordingly, the Department's decision is **AFFIRMED with the reduced overissuance amount of \$337.00 for the period of January 1, 2020 through February 29, 2020.**

CL/ml

  
\_\_\_\_\_  
Colleen Lack  
Administrative Law Judge  
for Elizabeth Hertel, Director  
Department of Health and Human Services

