



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: September 17, 2021  
MOAHR Docket No.: 21-003646  
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 September 14, 2021, from Lansing, Michigan. [REDACTED] the Petitioner, appeared on her own behalf. The Department of Health and Human Services (Department) was represented by Eugene Brown II, Recoupment Specialist (RS).

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-100.

### **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. From June 2019 through May 2020, Petitioner's household received FAP benefits totaling [REDACTED]. (Exhibit A, pp. 18-21)
2. On [REDACTED], 2018, Petitioner applied for FAP. Petitioner reported that she had multiple drug related felony convictions. (Exhibit A, p. 73-80)
3. On December 20, 2018, a Notice of Case Action was issued to Petitioner stating FAP was approved for a household of five, including Petitioner. The Notice

reminded Petitioner of the responsibility to report when the gross monthly household income exceeded [REDACTED]. (Exhibit A, pp. 45-50)

4. On November 26, 2019, Petitioner submitted a Redetermination. Petitioner reported that she had multiple drug related felony convictions. (Exhibit A, pp. 87-94)
5. On December 6, 2019, a Notice of Case Action was issued to Petitioner stating FAP was approved for a household of five, including Petitioner. The Notice reminded Petitioner of the responsibility to report when the gross monthly household income exceeded [REDACTED] (Exhibit A, pp. 51-57)
6. On [REDACTED] 2020 Petitioner applied for FAP. Petitioner again reported that she had multiple drug related felony convictions. (Exhibit A, p. 68)
7. On July 14, 2020, a Notice of Case Action was issued to Petitioner stating FAP was approved for a household of four, which did not include Petitioner, from June 29-30, 2020, and FAP was denied effective July 1, 2020 due to the drug related felony convictions and income in excess of the program limit. (Exhibit A, pp. 58-64)
8. The Department reviewed past FAP eligibility, including verifying Petitioner's household's income. (Exhibit A, pp. 6, 21-44, and 65-67)
9. The Department determined that Petitioner was overissued FAP benefits from June 2019 through May 2020 due to the drug related felony convictions. (Exhibit A, pp. 6-17)
10. On May 14, 2021, the Department sent Petitioner a Notice of Overissuance instructing her that a [REDACTED] overissuance of FAP benefits occurred from June 2019 through May 2020 due to agency error and would be recouped. (Exhibit A, pp. 9-14)
11. On or about August 8, 2021, the Department received Petitioner's request for a hearing protesting the recoupment of FAP benefits. (Exhibit A, p. 4)

### **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, January 1, 2018, 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. 11-13)

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, October 1, 2018, 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 an agency error overissuance occurred because Petitioner reported that she had multiple drug-related felony convictions, but the Department failed to act on the information, which would have made Petitioner an ineligible FAP group member. (Exhibit A, pp. 6-8, 15-16, and 68-72)

On [REDACTED] 2018, Petitioner applied for FAP. Petitioner reported that she had multiple drug related felony convictions. (Exhibit A, p. 73-80) On December 20, 2018, a Notice of Case Action was issued to Petitioner stating FAP was approved for a household of five, including Petitioner. The Notice reminded Petitioner of the responsibility to report when the gross monthly household income exceeded [REDACTED] (Exhibit A, pp. 45-50)

On November 27, 2019, Petitioner submitted a Redetermination. Petitioner reported that she had multiple drug related felony convictions. (Exhibit A, pp. 87-94) On December 6, 2019, a Notice of Case Action was issued to Petitioner stating FAP was approved for a household of five, including Petitioner. The Notice reminded Petitioner of the responsibility to report when the gross monthly household income exceeded [REDACTED] (Exhibit A, pp. 51-57)

On a [REDACTED], 2020 FAP application Petitioner again reported that she had multiple drug related felony convictions. (Exhibit A, p. 68) On July 14, 2020, a Notice of Case

Action was issued to Petitioner stating FAP was approved for a household of four, which did not include Petitioner, from June 29-30, 2020, and FAP was denied effective July 1, 2020 due to the drug-related felony convictions and income in excess of the program limit. (Exhibit A, pp. 58-64)

The Department then reviewed the past FAP eligibility for Petitioner's household. The Department verified Petitioner's household's income. (Exhibit A, pp. 6, 21-44, and 65-67) The Department determined that Petitioner was overissued FAP benefits from June 2019 through May 2020 due to the drug related felony convictions. (Exhibit A, pp. 6-17) On May 14, 2021, the Department sent Petitioner a Notice of Overissuance instructing her that a [REDACTED] overissuance of FAP benefits occurred from June 2019 through May 2020 due to agency error and would be recouped. (Exhibit A, pp. 9-14)

Petitioner noted that if she had known she was was ineligible for the FAP benefits, she would not have used them. Petitioner understandably relied on the eligibility determinations made by the Department. (Exhibit A, p. 4; Petitioner Testimony)

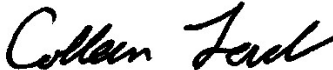
Overall, the evidence supports the Department's determination that Petitioner received an overissuance of FAP benefits from June 2019 through May 2020 due to an agency error. Petitioner reported having multiple drug-related felony convictions, which made Petitioner an ineligible FAP group member. The Department did not act on this information, which resulted in the overissuance. Under the BAM 700 policy, when a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. This includes an agency error overissuance when the estimated amount is \$250.00 or more. Accordingly, the Department properly sought recoupment of the [REDACTED] agency error overissuance from Petitioner.

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 [REDACTED] overissuance of FAP benefits that must be recouped.

### **DECISION AND ORDER**

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

CL/ml

  
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**Colleen Lack**  
Administrative Law Judge

