



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: June 13, 2022  
MOAHR Docket No.: 21-004017  
Agency No.: [REDACTED]  
Petitioner: [REDACTED] [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Landis Lain**

### **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 June 8, 2022, from Lansing, Michigan. Petitioner [REDACTED] self-represented at the hearing. The Department of Health and Human Services (Department or Respondent) was represented by Authorized Hearings Representative Julie Barr, Recoupment Specialist.

Respondent's Exhibits 1-66 (pages 1-66) were admitted as evidence.

### **ISSUE**

Did the Department properly determine that Petitioner received an over-issuance of Food Assistance Program (FAP) benefits which the Department must recoup?

### **FINDINGS OF FACT**

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

1. On July 1, 2019, Petitioner filed an application for FAP benefits.
2. On September 4, 2019 Petitioner provided an employment agreement from Helen Newberry Joy Hospital & Healthcare Center. Petitioner provided her first check stub on October 10, 2019; and the second check stub was scanned in on October 11, 2019.
3. The Department failed to budget Petitioner's earnings which created an overissuance of FAP benefits from December 2019-June 2020.

4. For the month of May 2020, Petitioner would have been eligible to receive \$16 in FAP benefits and would have received the emergency allotment (COVID-19 supplement).
5. There is no over-issuance for the month of May 2020.
6. The Department determined that FAP EDG Net Income Results and FAP Excess Shelter Deduction show certified FAP group size of 1, with \$█ total unearned and \$█ earned income and \$0 shelter expenses budgeted for each overpayment month.
7. These factors are what the FAP benefits were based on and issued from October 2019-June 2020.
8. On July 22, 2021, the Department sent Petitioner Notice of Over-issuance based upon Agency Error in the amount of \$1132.00 for December 1, 2019-June 2020 which the Department must recoup.
9. FAP closed effective July 2020.
10. On █ █ █ Petitioner filed a Request for Hearing to contest the negative action indicating: "The required information was provided to the Agency. The Agency failed to use the information in their determination. They issued the funds and did not notify me of the error before I used the funds. Over a year later they finally notified me and expect me to pay back \$1132.00 in less than a week. I should not be responsible for their error & lack of communication.
11. On August 27, 2021, the Michigan Office of Administrative Hearings and Rules received a Hearing Summary and attached documents.

### **CONCLUSIONS OF LAW**

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a Department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101-.3131.

Pertinent Department policy dictates:

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the over issuance. BAM 700, p 1 (1/1/2016).

Recoupment is a MDHHS action to identify and recover a benefit over issuance. A recoupment specialist (RS) is the specialist assigned to process over issuances and act as liaison with OIG, reconciliation and recoupment section (RRS), and other personnel involved with recoupment and collections. BAM 700 page 2

An agency error is caused by incorrect action (including delayed or no action) by MDHHS staff or Department processes. Some examples are:

- Available information was not used or was used incorrectly.
- Policy was misapplied.
- Action by local or central office staff was delayed.
- Computer errors occurred.
- Information was not shared between Department divisions such as services staff.
- Data exchange reports were not acted upon timely (wage match, new hires, BENDEX, etc.).

If unable to identify the type, record it as an agency error. FIP, SDA, CDC and FAP Agency errors are not pursued if the estimated amount is less than \$250 per program. BEM 700, page 5

When a potential over issuance is discovered, the following actions must be taken:

1. Immediately correct the current benefits; see BAM 220, Case Actions, for change processing requirements.
2. Obtain initial evidence that an over issuance potentially exists.
3. Determine if it was caused by Department, provider or client actions.
4. Refer any over issuances needing referral to the RS within 60 days of suspecting one exists.

**Exception:** Office of Quality Assurance (OQA) discovered over issuances must be referred to the RS within 7 days of receipt of the OQA findings. OQA has already verified one exists. FIP, SDA, CDC and FAP Within 60 days of suspecting an over

issuance exists, complete a DHS-4701, Over issuance Referral, and refer the following over issuances to the RS for your office:

- All client and agency errors over \$250.
- All suspected IPV errors.
- All CDC provider errors BAM 700 page 10

In this case, Petitioner did receive notice that the Department committed an error when it calculated her FAP benefits from December 2019-June 2020. Petitioner was given a higher shelter expense than she was entitled to.

Petitioner testified that she should not have to pay this amount back as she reported all of her income and did exactly what she was supposed to do. Petitioner's argument is a compelling equitable argument to be excluded from Department policy. This Administrative Law Judge has no equity powers and cannot make a decision that is in contravention of Department policy.

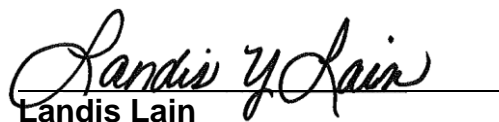
Evidence on the record indicates the petitioner received an over issuance of Food Assistance Program benefits in the amount of \$1132.00 based upon the fact that Petitioner's income was not properly budgeted. The department is required to recoup overissued benefits.

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 finds that the Department has established by the necessary competent, material and substantial evidence on the record that it acted in accordance with Department policy when it determined that Petitioner has been overissued FAP benefits in the amount of \$1132.00 based upon Department error, which must be recouped. Even if the error was made by the agency, the Department is compelled by Department policy to recoup any benefits in excess of the amount of \$250.00. The Department has established its case by a preponderance of the evidence.

### **DECISION AND ORDER**

Accordingly, the Department's decision is **AFFIRMED**. The Department is **ORDERED** to initiate the Recoupment process in accordance with Department policy within ten days of receipt of this Decision and Order.

LL/ml

  
Landis Lain  
Administrative Law Judge

**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

**Via-Electronic Mail :**

**DHHS**  
Rhonda Legault (Luce DHHS)  
Luce County DHHS  
500 West McMillan St.  
Newberry, MI 49868

**Interested Parties**  
MDHHS Recoupment  
BSC1  
M. Holden  
D. Sweeney  
MOAHR

**Via-First Class Mail :**

**Petitioner**  
[REDACTED]  
[REDACTED]  
[REDACTED], MI [REDACTED]