



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: November 9, 2021  
MOAHR Docket No.: 21-004690  
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 November 4, 2021. Petitioner appeared unrepresented. The Department of Health and Human Services (Department) was represented by Mrs. B. Ray, RC.

Department Exhibit A.66 was offered and admitted into the record.

### **ISSUE**

Did the Department properly propose to recoup 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 and his spouse were beneficiaries of the FAP program.
2. On October 1, 2021, the Department issued a Notice of Overissuance to Petitioner informing him that the Department determined that Petitioner received an overissuance of \$4,374.00 in FAP benefits for the time period of 4/1/2020 to 3/31/2021, which was the total FAP benefit issued to Petitioner's household.
3. The Department classified the OI as due to agency error.
4. On October 8, 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.

Applicable policy and procedure to the case herein is found at numerous manual items, found in BAM and BEM. Corresponding federal regulations are found at 7 CFR 273.18.

In this case, pursuant to income policy and corresponding federal regulations, the Department is required to count all income in calculating eligibility for the FAP program. In addition, federal and state law and corresponding policy requires the Department to recoup FAP benefits where benefits were issued in error, whether client or agency error, with certain exceptions not applicable herein. In fact, failure by the Department to collect any overpayments to FAP recipients, regardless as to whether they are client or agency error, can subject the State of Michigan to substantial financial penalties.

Here, unrefuted evidence of record is that the Department did not budget Petitioner's spouse's income in calculating FAP eligibility during the OI period. Income was verified on a Consolidated Inquiries data base. The Department stipulates that the Department worker failed to clarify income and thus the error is agency error. However, any agency error over \$250.00 must be pursued under federal and state law. Further, there are no COVID exceptions where eligibility would otherwise be 0, as is the case herein. See Exhibit A.60.

Petitioner does not dispute any of the Department's calculations and/or budgets.

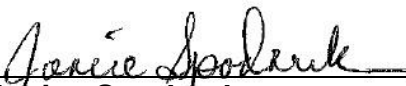
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department acted in accordance with Department policy when it issued a FAP recoupment notice for 4/1/20 to 3/31/21.

**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

**Via Email:**

MDHHS-Berrien-Hearings  
MDHHS-Recoupment  
BSC3  
M. Holden  
D. Sweeney  
MOAHR

**Petitioner**

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