



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: January 11, 2022  
MOAHR Docket No.: 21-005581  
Agency No.: [REDACTED]  
Petitioner: [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 January 5, 2021, from Lansing, Michigan. The Petitioner was represented by Petitioner [REDACTED]. The Department of Health and Human Services (Department or Respondent) was represented by Jennifer Braxmeir, Recoupment Specialist.

Respondent's Exhibit A pages 1-54 were admitted as evidence.

### **ISSUE**

Did the Department properly propose to recoup Food Assistance Program (FAP)?

### **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 [REDACTED] Petitioner applied for FAP benefits.
2. At the time of this application, the only income in the home was RSDI for Petitioner and her husband, EF.
3. On 6/10/2019, DHHS received a New Hire hit for [REDACTED] at [REDACTED] which was due 7/1/2019.
4. DHHS failed to timely act on this New Hire.

5. ■ had continuous income from 5/31/2019-4/30/2020: earnings at ■ 5/31/19-4/3/20 and then UCB 4/4/2020-4/18/2020.
6. Verification of ■ earnings at ■ were obtained from The Work Number and used to run FAP budgets for every month from 8/1/2019-4/30/2020.
7. Due to the Departments failure to timely act on the New Hire, client was overissued FAP from 8/1/2019-4/30/2020 in the amount of ■ and was assigned as Agency Error.
8. On 10/15/2021, DHHS mailed Petitioner a Notice of Overissuance, informing her of the findings.
9. Petitioner filed a hearing request on the Agency Error Overissuance, arguing that she should not be responsible to repay an error made by the Department.
10. During the prehearing conference held 11/30/2021, Petitioner again stated she should not have to repay an Agency Error, and stated she threw the EBT card away when ■ started working.
11. However, based on FAP benefit issuance, the FAP has been utilized, as any unused FAP benefits are automatically expunged after 12 months of nonuse.

### **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 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.

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

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. A client error also exists when the client's timely request for a hearing result in deletion of a MDHHS action, and any of the following occurred:

- The hearing request is later withdrawn.
- MAHS denies the hearing request.
- The client or administrative hearing representative fails to appear for the hearing and MAHS gives MDHHS written instructions to proceed.
- The hearing decision upholds the Department's actions; see BAM 600. BAM 700 page 7

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 August 1, 2019 to April 30, 2020.

Petitioner testified that she should not have to pay this amount back as it creates a hardship for her family. She testified that she did not use the benefits and threw the card away. She did contact the Department and leave a message about her increased income. 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.

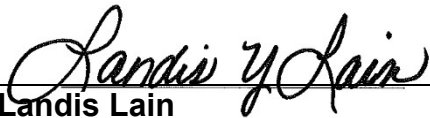
Evidence on the record indicates the petitioner received an over issuance of food assistance program benefits in the amount of [REDACTED] based upon the fact that Petitioner's income was not properly budgeted. The department is required to recoup overissued benefits.

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 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 [REDACTED] 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. 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

**Electronic Mail Recipients:**

MDHHS-Recoupment  
MDHHS-GR8North-Hearings  
BSC1  
M. Holden  
D. Sweeney  
MOAHR

**First Class Mail Recipient:**

[REDACTED]  
[REDACTED]  
[REDACTED] MI [REDACTED]