



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS  
DIRECTOR

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Date Mailed: January 27, 2023  
MOAHR Docket No.: 22-006177  
Agency No.: ██████████  
Petitioner: ██████████

**ADMINISTRATIVE LAW JUDGE: Ellen McLemore**

**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 26, 2023, from Detroit, Michigan. Petitioner was present with her husband, ██████████. The Department of Health and Human Services (Department) was represented by Dania Ajami, Assistance Payments Worker.

**ISSUE**

Did the Department properly close Petitioner's Food Assistance Program (FAP) and Family Independence Program (FIP) benefit cases?

Did Petitioner receive an overissuance (OI) of FIP 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. Petitioner was an ongoing FIP and FAP recipient.
2. On December 2, 2022, Petitioner completed a semi-annual review.
3. Petitioner owned two properties located at ██████████ in ██████████ Michigan, as well as ██████████ in ██████████ Michigan.
4. Petitioner submitted verification of the taxable value of both properties (Exhibit A, pp. 32-33).

5. On December 2, 2022, the Department sent Petitioner a Notice of Case Action informing her that her FIP and FAP benefit cases were closing effective January 1, 2023, ongoing, due to excess assets for both programs (Exhibit A, pp. 22-27).
6. On December 2, 2022, the Department sent Petitioner a Notice of Overissuance informing her that she was overissued FIP benefits in the amount of \$[REDACTED] during the period of July 1, 2022, through July 31, 2022, as a result of client error (Exhibit A, pp. 10-11).
7. On December 21, 2022, Petitioner submitted a request for hearing disputing the Department's actions regarding the closure of her FIP and FAP benefit cases, as well as the overissuance.

### **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 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.

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.

In this case, Petitioner was an ongoing FIP and FAP recipient. On December 2, 2022, Petitioner completed a semi-annual review related to her FAP benefit case. The Department discovered that Petitioner owned two real property parcels in [REDACTED], Michigan. The Department determined Petitioner exceeded the asset limit for the FIP and FAP program and closed her cases as a result.

For FIP benefit cases, the Department will count homes and real property as an asset. BEM 400 (October 1, 2022), p. 1. For FAP benefit cases, the Department will exclude as an asset, one homestead for an asset group. BEM 400, p. 35. A homestead is where a person lives (unless absent; see absent from homestead, in this item) that they own, is buying or holds through a life estate or life lease. BEM 400, p. 35. It includes the home, all adjoining land and any other buildings on the land. BEM 400, p. 35. Adjoining

land means land which is not completely separated from the home by land owned by someone else. BEM 400, p. 35. Adjoining land may be separated by rivers, easements and public rights-of-way (example: utility lines and roads). BEM 400, p. 35. To determine the value of real property the Department can multiple the State Equalized Value by on current property tax records by two. BEM 400, p. 33. The asset limit for FIP benefits is \$15,000 for cash, investment and retirement plans, and \$200,00 for real property assets. BEM 400, p. 5. For FAP benefit cases, the total countable assets must not exceed \$15,000. BEM 400, p. 5.

The Department presented tax statements for the two properties (Exhibit A, pp. 32-34). The SEV of [REDACTED] is \$[REDACTED]. Multiplied by two, the value of [REDACTED] is \$[REDACTED]. The SEV for [REDACTED] is \$[REDACTED]. Multiplied by two, the value of [REDACTED] is \$[REDACTED]. Petitioner's total real property value is \$[REDACTED]. The asset limit for real property for FIP benefits is \$200,000. As Petitioner's real property asset value does not exceed the limit, the Department did not act in accordance with policy when it closed Petitioner's FIP benefit case.

For Petitioner's FAP benefit case, the Department determined that the second property at [REDACTED] was not a part of the homestead exclusion, resulting in Petitioner exceeding the asset limit for FAP benefits. At the hearing, Petitioner's husband testified that his primary home is at [REDACTED]. Petitioner and her husband also own the adjoining property at [REDACTED], which was sold to him as two separate parcels by the previous owner. The property at [REDACTED] has a garage with a small living space above. The living space has a common area, bedroom, small kitchen and bathroom. Petitioner's husband stated he uses the space as bedrooms for some of his children. Petitioner's husband described the space as a "mancave" above his garage. Petitioner's husband indicated the City of [REDACTED] requires that the parcels remain separate, as the garage space is considered a residence. Petitioner's two parcels border one another and are not separated by a parcel owned by a third party. A homestead includes any adjoining land and all buildings on the land, so long as there is not a separation. BEM 400, p. 35. Therefore, Petitioner's second property is a part of the homestead and should be excluded when considering the group's eligibility for the FAP benefit program. Thus, the Department did not act in accordance with policy when it closed Petitioner's FAP benefit case.

At the hearing, it was determined that Petitioner had also requested a hearing related to an overissuance. On December 2, 2022, the Department sent Petitioner a Notice of Overissuance, informing her she was overissued FIP benefits in the amount of \$[REDACTED] during the period of July 1, 2022, through July 31, 2022, as a result of client error. At the hearing, the undersigned ALJ indicated the hearing would be continued to address the issue. However, the overissuance was related to Petitioner's failure to report her assets. As stated above, Petitioner did not exceed the asset limit for the FIP or FAP program. Therefore, Petitioner's failure to report the asset would not have resulted in an overissuance, as it does not prevent her from being eligible for FIP benefits. Therefore, the hearing will not be continued to address the matter, as the Department failed to

establish that it acted in accordance with policy when determining Petitioner was overissued FIP benefits.

### **DECISION AND ORDER**

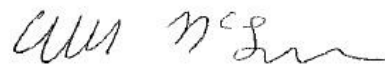
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with Department policy when it closed Petitioner's FAP and FIP benefit cases and when it determined Petitioner was overissued FIP benefits.

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

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Petitioner did not receive an OI of FIP program benefits in the amount of \$█.
2. The Department is **ORDERED** to delete the OI and cease any recoupment and/or collection action.
3. Redetermine Petitioner's FIP and FAP eligibility as of January 1, 2023, ongoing;
4. If Petitioner is eligible for FIP and FAP benefits, issue supplements in accordance with Department policy; and
5. Notify Petitioner of its decision in writing.

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**Ellen McLemore**  
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**  
Caryn Jackson  
Wayne-Hamtramck-DHHS  
12140 Joseph Campau  
Hamtramck, MI 48212  
**MDHHS-Wayne-55-  
Hearings@michigan.gov**

**Interested Parties**

M. Holden  
D. Sweeney  
B. Sanborn  
MDHHS-Recoupment-Hearings  
BSC4

**Via-First Class Mail :**

**Petitioner**  
Sabah Algahim  
11335 Klinger St  
Hamtramck, MI 48212