



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: July 11, 2023  
MOAHR Docket No.: 23-003270  
Agency No.: ██████████  
Petitioner: ██████████

**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 July 5, 2023, from Lansing, Michigan. ██████████ the Petitioner, appeared on his own behalf. The Department of Health and Human Services (Department) was represented by Julie Barr, Recoupment Specialist (RS).

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-123.

**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 July 1, 2017 to December 31, 2017 Petitioner received FAP benefits totaling \$1,158.00. (Exhibit A, p. 18)
2. On ██████████ 2017, Petitioner submitted an Assistance Application for FAP and reported no self-employment income. (Exhibit A, pp. 102-121)
3. During a May 15, 2017 interview, Petitioner reported no self-employment income since March 2017. (Exhibit A, p. 87)
4. On June 8, 2017, a Notice of Case Action was issued to Petitioner approving FAP. A budget summary was included showing no self-employment income was

- included in the FAP budget. The Notice reminded Petitioner of the responsibility to report changes within 10 days. (Exhibit A, pp. 88-93)
5. On April 3, 2018, Petitioner submitted a Redetermination and no income was reported. (Exhibit A, pp. 94-101)
  6. During an April 6, 2018 interview, Petitioner indicated he had no income in 2017 or to date in 2018, including no self-employment income from his sale/refrigeration business. (Exhibit A, p. 86)
  7. On May 31, 2018, Petitioner submitted a copy of his 2017 income tax return, including a Schedule C that showed income of [REDACTED] (Exhibit A, pp. 62-84)
  8. On June 19, 2018, Petitioner submitted Self-Employment Income and Expense Statements reporting income of [REDACTED] from sales commission for the months of January 2018 to June 2018. (Exhibit A, pp. 50-61)
  9. The Department determined that Petitioner was overissued FAP benefits from July 1, 2017 to December 31, 2017 in the amount of \$888.00 due to client error of not reporting self-employment income for 2017. (Exhibit A, pp. 3 and 19-49)
  10. On February 6, 2023, the Department sent Petitioner a Notice of Overissuance instructing him that a \$888.00 overissuance of FAP benefits occurred from July 1, 2017 to December 31, 2017 due to client error and would be recouped. (Exhibit A, pp. 12-17)
  11. On February 15, 2023, the Department received Petitioner's request for a hearing protesting the recoupment of FAP benefits. (Exhibit A, pp. 4-10)

### **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, October 1, 2016, p. 9. Generally, 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. A change report by tape match is to be acted upon within 15 workdays. BAM 220, April 1, 2017, 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 a FAP client error overissuance occurred from July 1, 2017 to December 31, 2017 in the amount of \$888.00 due to client error of not reporting self-employment income for 2017. (Exhibit A, pp. 3 and 19-49).

From July 1, 2017 to December 31, 2017 Petitioner received FAP benefits totaling \$1,158.00. (Exhibit A, p. 18). During a May 15, 2017 interview, Petitioner reported no self-employment income since March 2017. (Exhibit A, p. 87). On June 8, 2017, a Notice of Case Action was issued to Petitioner approving FAP. A budget summary was included showing no self-employment income was included in the FAP budget. The Notice reminded Petitioner of the responsibility to report changes within 10 days. (Exhibit A, pp. 88-93).

On April 3, 2018, Petitioner submitted a Redetermination and no income was reported. (Exhibit A, pp. 94-101). During an April 6, 2018 interview, Petitioner indicated he had no income in 2017 or to date in 2018, including no self-employment income from his sale/refrigeration business. (Exhibit A, p. 86).

However, on May 31, 2018, Petitioner submitted a copy of his 2017 income tax return, including a Schedule C that showed income of [REDACTED] (Exhibit A, pp. 62-84).

The Department determined that Petitioner was overissued FAP benefits from July 1, 2017 to December 31, 2017 in the amount of \$888.00 due to client error of not reporting self-employment income for 2017. The Department divided the income by 12 as it was unclear what months in 2017 Petitioner received self-employment income. When the unreported self-employment income was included in the FAP budgets, Petitioner was

only eligible to receive \$270.00 in FAP benefits during the overissuance period. (Exhibit A, pp. 19-49). Accordingly, on February 6, 2023, the Department sent Petitioner a Notice of Overissuance instructing him that a \$888.00 overissuance of FAP benefits occurred from July 1, 2017 to December 31, 2017 due to client error and would be recouped. (Exhibit A, pp. 12-17).

Petitioner indicated he did not work after he applied for and began receiving FAP. However, later in the year, commission checks came in. Petitioner stated he did not know what it was until the end of the year. However, Petitioner acknowledged that he does not have any evidence of how much of the 2017 income was received before he applied for FAP and how much was received at the end of the year. (Petitioner Testimony).

The above cited BAM 700 policy requires the Department to recoup the overissuance when a client group receives more benefits than it is entitled to receive. This includes overissuances caused by client or agency errors when the amount is at least \$250 per program.

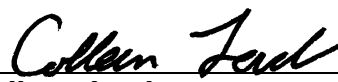
Overall, the evidence supports the Department's determination that Petitioner received an overissuance of FAP benefits from July 1, 2017 to December 31, 2017 in the amount of \$888.00 due to client error of not reporting self-employment income for 2017. Petitioner's testimony indicated he received income from prior commissions at the end of 2017. The case record shows that Petitioner did not report receiving this income at the end of 2017. (Exhibit A, pp. 86-87). Therefore, the Department properly sought recoupment of a \$888.00 overissuance of FAP benefits 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 the \$888.00 overissuance of FAP benefits from July 1, 2017 to December 31, 2017 due to client error, which must be recouped.

### **DECISION AND ORDER**

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

CL/ml

  
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**Colleen Lack**  
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**  
Sarah Hess  
Dickinson County DHHS  
1401 Carpenter Ave.  
Iron Mountain, MI 49801  
**MDHHS-UPSChearings@Michigan.gov**

**DHHS Department Rep.**  
Overpayment Establishment Section (OES)  
235 S Grand Ave, Ste 811  
Lansing, MI 48909  
**MDHHS-RECOUPMENT-HEARINGS@Michigan.gov**

**Interested Parties**  
BSC1  
M Holden  
D Sweeney  
MOAHR

**Via First Class Mail:**

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