



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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██████████, MI ██████████

Date Mailed: August 18, 2023  
MOAHR Docket No.: 23-003897  
Agency No.: ██████████  
Petitioner: ██████████

**ADMINISTRATIVE LAW JUDGE: Linda Jordan**

### **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 hearing was held on August 9, 2023 via teleconference. Petitioner appeared and represented himself. Mary Peterson, Recoupment Specialist, appeared on behalf of the Michigan Department of Health and Human Services (MDHHS or Department).

### **ISSUE**

Did MDHHS properly determine that Petitioner received an overissuance (OI) of Food Assistance Program (FAP) benefits in the amount of \$██████████ due to an agency error?

### **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 recipient of FAP benefits for a FAP-group of five.
2. On February 11, 2020, Petitioner submitted a FAP Renewal, reporting that his current address had not changed (Exhibit A, p. 9).
3. On February 24, 2020, MDHHS sent Petitioner a Notice of Case Action, approving Petitioner for FAP benefits for a household of five beginning March 1, 2020 (Exhibit A, p. 14).
4. On April 23, 2020, Petitioner submitted a paystub for earned income on behalf of his wife from Chick-fil-A (Employer) in Clermont, Florida (Exhibit A, pp. 1, 27). MDHHS failed to confirm whether Petitioner's FAP group moved to Florida (Exhibit A, p. 1).
5. On May 1, 2020, MDHHS sent Petitioner a Notice of Case Action, indicating that the Petitioner's FAP benefit rate decreased, beginning June 1, 2020, based on a change in earned income (Exhibit A, pp. 28-29).

6. On May 1, 2020, MDHHS sent Petitioner a Notice of Case Action, indicating that the group's FAP benefit rate decreased, beginning June 1, 2020, based on a change in earned income (Exhibit A, pp. 28-29).
7. On July 31, 2020, Petitioner submitted a FAP Renewal, reporting that his current address had not changed (Exhibit A, p. 50).
8. On July 31, 2020, MDHHS sent Petitioner a Notice of Case Action, approving Petitioner for FAP benefits for a household of five beginning August 1, 2020 (Exhibit A, p. 51).
9. On April 28, 2023, MDHHS sent Petitioner a Notice of Overissuance indicating that Petitioner was overissued FAP benefits in the amount of \$[REDACTED] during the period of June 1, 2020 to February 28, 2021 (alleged OI period) (Exhibit A, p. 142). The notice stated that the OI was due to agency error based on a failure to act when Petitioner submitted the paystub for Employer showing employment out-of-state (Exhibit A, p. 142). The Agency alleged that Petitioner received an OI of benefits because the group members were no longer residents of Michigan (Exhibit A, p. 142).
10. On July 6, 2023, Petitioner requested a hearing to dispute MDHHS' determination regarding the FAP OI (Exhibit A, pp. 6-7).

### **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. MDHHS 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, MDHHS determined that Petitioner received an OI of FAP benefits due to an agency error because it failed to act on a reported change that Petitioner's wife was receiving employment income in Florida. Although the change in income was processed, MDHHS failed to verify whether the family had moved to Florida. MDHHS ultimately determined that Petitioner and his family moved to Florida and that they were no longer Michigan residents, and therefore, ineligible for FAP in Michigan.

When a client group receives more benefits than entitled to receive, MDHHS must attempt to recoup the OI as a recipient claim. 7 CFR 273.18(a)(2); BAM 700 (October 2018), p. 1. The amount of a FAP OI is the benefit amount the client actually received minus the amount the client was eligible to receive. 7 CFR 273.18(c)(1); BAM 720, p. 8;

BAM 715 (October 2017), p. 6. An OI can be caused by client error, agency error, or an intentional program violation. BEM 700, pp. 5-9. An agency error is caused by incorrect action by MDHHS staff or Department processes. BEM 700, p. 5. Agency errors are not pursued if less than \$250.00 per program. *Id.* Conversely, a client error occurs when the OI was due to the client giving incorrect or incomplete information to MDHHS. BEM 700, p. 7.

Pursuant to federal regulations, MDHHS shall not impose any durational residency requirements for FAP and there is no requirement that an eligible household reside in the state, except for at the time of application. See 7 CFR 273.3(a) (“A household shall live in the State in which it files an application for participation. . . . The State agency shall not impose any durational residency requirements. The State agency shall not require an otherwise eligible household to reside in a permanent dwelling or have a fixed mailing address as a condition of eligibility. Nor shall residency require an intent to reside permanently in the State or project area.”).

BEM 220 requires that a person be a Michigan resident for FAP eligibility and provides that a person is a resident while living in Michigan for any purpose other than a vacation, even if there is no intent to remain in the state permanently or indefinitely. BEM 220 (April 2018), p. 1. To comply with the federal regulations, this rule can only apply at the time of application or redetermination.

At the hearing, Petitioner disputed MDHHS’ contention that his family moved to Florida. He credibly testified that his family’s homebase was in Michigan during the alleged OI period. Petitioner explained that his family is a family of ministers that frequently travels on missions. He further testified that his wife and children spent time in Florida during the alleged OI period with the intent of returning to Michigan, and frequently traveled between the two states. He remained in Michigan while his family was in Florida. While in Florida, Petitioner’s wife obtained part-time employment at Employer. The group reported Petitioner’s wife’s earnings in a timely manner pursuant to policy. Petitioner further explained that the FAP benefits were only redeemed in Florida because Petitioner’s wife and children were there temporarily and he wanted them to use the benefits for their needs, instead of Petitioner using the benefits in Michigan for himself (See Exhibit A, pp. 97-109 for IG-311 EBT History, which shows exclusive use of FAP benefits in Florida from February 7, 2020 to March 9, 2021 ).

Based on Petitioner’s testimony, the record reflects that Petitioner and his family remained Michigan residents during the alleged OI period. Petitioner remained in Michigan while his family spent time in Florida temporarily. There is no restriction on using FAP benefits out of state. Additionally, MDHHS may not impose durational residency requirements on FAP beneficiaries under federal law.

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 MDHHS failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined that Petitioner received an OI of FAP benefits based on a lack of Michigan residency.

**DECISION AND ORDER**

Accordingly, MDHHS' decision is **REVERSED**.

**MDHHS IS ORDERED**, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER, to delete the FAP OI in the amount of \$ [REDACTED] in its entirety and cease any recoupment or collection actions.



LJ/tm

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**Linda Jordan**  
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**  
Matt Zofchak  
Shiawassee County DHHS  
1720 East Main Street  
Owosso, MI 48867  
**MDHHS-Shiawassee-  
Hearings@michigan.gov**

**Interested Parties**

M. Holden  
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**DHHS Department Rep.**

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235 S Grand Ave Ste 811  
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**MDHHS-RECOUPMENT-  
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**Via-First Class Mail :**

**Petitioner**

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