



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: April 6, 2022  
MOAHR Docket No.: 22-000743  
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 March 31, 2022, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Julie Barr, Eligibility Specialist and Alberta Kelley, Recoupment Specialist.

**ISSUE**

Did Petitioner receive an overissuance of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?

**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 FAP recipient between the period of September 1, 2021 through September 30, 2021 (Exhibit A, p. 29).
2. On ██████████ 2021, Petitioner submitted an application for FAP benefits. Petitioner reported that her husband had recently lost his employment (Exhibit A, pp. 11-17).
3. The Department determined Petitioner's September 2021 benefit eligibility by including Petitioner's husband's paycheck that was issued on September 2, 2021, as his final payment.

4. On January 31, 2022, the Department sent Petitioner a Notice of Overissuance informing her that she was overissued FAP benefits for the period of September 1, 2021 through September 30, 2021, in the amount of \$[REDACTED] due to agency error (Exhibit A, pp. 36-41).
5. On [REDACTED], 2022, Petitioner submitted a request for hearing disputing the Department's actions.

### **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.

In this case, Petitioner submitted an application for FAP benefits on [REDACTED], 2021. Petitioner notified the Department that her husband had lost his employment on September 22, 2021. The Department retrieved Petitioner's husband's Work Number report. The Department processed Petitioner's application, and entered Petitioner's husband's September 2, 2021 paycheck as his final payment.

All countable earned and unearned income available to the client must be considered in determining a client's eligibility for program benefits. An employee's wages include salaries, tips, commissions, bonuses, severance pay, and flexible benefit funds not used to purchase insurance. The Department counts gross wages in the calculation of earned income. BEM 501 (July 2016), pp. 6-7. The Department must verify income at application and at redetermination. BEM 505 (October 2017), p. 14. When determining income, the Department uses income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month. BEM 505, p. 6. The Department must verify income that stopped within the 30 days prior to the application date or while the application is pending. BEM 505, p. 14. To verify wages, salaries and commissions for all programs, the Department will send a DHS-38, Verification of Employment. BEM 501 (October 2018), p. 11. BEM 505, p. 8. For stopping income, budget the final income expected to be received in the benefit month. BEM 505, p. 8. Use the best available information to determine the amount of the last check expected. BEM 505, p. 8. Use information from the source and from the client. Remove stopped income from the budget for future months. BEM 505, p. 8.

When the Department processed Petitioner's application, the Work Number report reflected that Petitioner's husband was paid on September 2, 2021; September 16, 2021; and September 30, 2021. Despite the information provided by the Work Number, the Department entered the September 2, 2021 paycheck as Petitioner's husband's final paycheck. As such, the Department testified that Petitioner's September 2021 FAP benefit amount was improperly calculated, as the household income for September 2021 should have included the September 16, 2021 and September 30, 2021 paychecks. The Department initially determined that Petitioner was approved for FAP benefits in the amount of \$■■■■ which also entitled her to a FAP supplement of \$■■■■, related to the COVID-19 pandemic. The Department stated that Petitioner was not entitled to any FAP benefits during the month of September 2021, and therefore, was also not entitled to the supplement. The Department testified that Petitioner was overissued FAP benefits for the period of September 1, 2021 through September 30, 2021, in the amount of \$■■■■ due to agency error.

When a client group receives more benefits that it is entitled to receive, the Department **must** attempt to recoup the overissuance. BAM 700 (October 2016), p. 1. An agency error is caused by incorrect action by the Department staff or department processes. BAM 700, p. 4. The amount of the overissuance is the benefit amount the group actually received minus the amount the group was eligible to receive. BAM 705 (January 2016), p. 6. If improper budgeting of income caused the overissuance, the Department will use actual income for the past overissuance month for that income source when determining the correct benefit amount. BAM 705, p. 8.

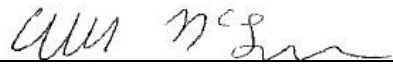
The Department presented the application submitted by Petitioner. The Department also presented the Work Number report for Petitioner's husband's income from employment. The Work Number report shows that Petitioner's husband received paycheck on September 16, 2021, and September 30, 2021, in addition to the paycheck issued on September 2, 2021. Per policy, Petitioner's husband's entire final income should have been included in September's FAP budget. The Department also presented overissuance budgets showing that had Petitioner's husband's entire income been included, the group would not have been eligible for FAP benefits in September 2021. As such, the Department correctly determined Petitioner's husband's earned income was not properly budgeted, and she was overissued FAP benefits as a result of agency error.

The Department presented Petitioner's Benefit Summary, which showed she was issued \$■■■■ in FAP benefits for the period of September 1, 2021, through September 20, 2021 (Exhibit A, p. 29). The Department presented overissuance budgets for the same time period (Exhibit A, pp. 30-32). The Department recalculated Petitioner's FAP benefit amount by adding Petitioner's husband's earned income for each month as shown on the Work Number. As stated above, the overissuance budgets show Petitioner was not entitled to any FAP benefits during the month of September 2021. Thus, Petitioner was also not entitled to the FAP supplement that she received. Therefore, the Department established it properly determined Petitioner was overissued FAP benefits in the amount of \$■■■■.

**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 acted in accordance with Department policy when it determined Petitioner received an overissuance of FAP benefits in the amount of \$[REDACTED]. Accordingly, the Department's decision is **AFFIRMED**.

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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 Email:**

MDHHS-906EUPHearings  
M. Holden  
D. Sweeney  
MDHHS-Recoupment-Hearings  
BSC1  
MOAHR

**Petitioner – Via First-Class Mail:**

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