



GRETCHEN WHITMER  
GOVERNOR

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

MARLON I. BROWN, DPA  
ACTING DIRECTOR

[REDACTED]  
[REDACTED]  
MI [REDACTED]

Date Mailed: October 18, 2023  
MOAHR Docket No.: 23-005659  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Danielle Nuccio**

### **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 October 12, 2023. Petitioner appeared and represented himself. The Department of Health and Human Services (MDHHS) was represented by Tracy Upshaw, Recoupment Specialist.

### **ISSUE**

Did Petitioner receive an overissuance (OI) of Food Assistance Program (FAP) benefits that MDHHS 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 recipient of FAP benefits for a group size of four.
2. MDHHS failed to include income that Petitioner's two children receive from Retirement, Survivors, and Disability Insurance (RSDI) when calculating Petitioner's FAP benefits and determining his eligibility.
3. On September 18, 2023, MDHHS issued a Notice of Overissuance to Petitioner informing him that MDHHS had determined that he received an Agency Error Overissuance from January 1, 2022 through October 31, 2022 in the amount of \$8,454.00 because MDHHS had failed to include unearned income from RSDI into his FAP budget (Exhibit A, pp. 15-20).
4. On September 13, 2023, Petitioner requested a hearing to dispute MDHHS' recoupment of overissued FAP benefits due to agency error.

### **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 [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. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

In this case, Petitioner disputes that, due to agency error, MDHHS is able to recoup overissued FAP benefits in the amount of \$8,454.00 from January 1, 2022 through October 31, 2022.

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), pp. 1-2. The amount of the OI is the benefit amount the group actually received minus the amount the group was eligible to receive. BAM 700, pp. 4-6; BAM 705 (October 2018), pp. 1-6. In this case, MDHHS asserted that Petitioner was issued \$8,454.00 (\$835 per month from January 1, 2022 through September 30, 2022 and \$939.00 in October 2022) in FAP benefits that he was not eligible to receive. However, upon reviewing the Benefit Summary Issuance, Petitioner was issued a much lower amount of FAP benefits each month (see Exhibit A, pp. 24-28). Therefore, MDHHS did not properly calculate the overissuance amount in Petitioner's case.

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 calculated Petitioner's overissuance of FAP benefits.

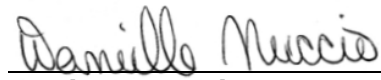
### **DECISION AND ORDER**

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. Recalculate Petitioner's OI to determine what, if any, FAP benefits are recoupable during the Agency Error OI period consistent with this Hearing Decision and law and policy;
2. Notify Petitioner of its decision in writing.

DN/mp



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**Danielle Nuccio**  
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 :**

**Interested Parties**

MDHHS-Recoupment-Hearings

MDHHS-Macomb-12-Hearings

D. Sweeney

M. Holden

MOAHR

BSC4

**Via-First Class Mail :**

**Petitioner**

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