



GRETCHEN WHITMER  
GOVERNOR

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

MARLON BROWN  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]

Date Mailed: September 19, 2024  
MOAHR Docket No.: 24-009220  
Agency No.: [REDACTED]  
Petitioner: [REDACTED] [REDACTED]

**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 September 11, 2024, from Lansing, Michigan. [REDACTED] [REDACTED] the Petitioner, appeared on her own behalf. The Department of Health and Human Services (Department) was represented by Julie Barr, Overpayment Establishment Analyst (OEA).

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-135.

**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. For the period of April 2021, June 2021 through August 2021, and October 2021 Petitioner received FAP benefits subject to recoupment totaling [REDACTED] (Exhibit A, pp. 55-59)
2. The FAP benefits for the months of May and September 2021 were excluded due to COVID policies in effect at that time. (Exhibit A, p. 3)
3. On September [REDACTED] 2020, Petitioner submitted a Redetermination for her FAP case. No employment income was reported. (Exhibit A, pp. 11-15)

4. On October █ 2020, a Notice of Case Action was issued to Petitioner approving FAP for a household size of two. A budget summary was included showing no earned income and \$█ of unearned income was included in the FAP budget. The Notice reminded Respondent of the responsibility to report changes within 10 days. A blank Change Report form was included. (Exhibit A, pp. 60-67)
5. On October █ 2020, a Notice of Case Action was issued to Petitioner approving FAP for a household size of two. A budget summary was included showing no earned income and \$█ of unearned income was included in the FAP budget. The Notice reminded Respondent of the responsibility to report changes within 10 days. (Exhibit A, pp. 68-72)
6. On November █ 2020, a Notice of Case Action was issued to Petitioner approving FAP for a household size of two. A budget summary was included showing no earned income and \$█ of unearned income was included in the FAP budget. The Notice reminded Respondent of the responsibility to report changes within 10 days. (Exhibit A, pp. 73-77)
7. On December █ 2020, a Notice of Case Action was issued to Petitioner approving FAP for a household size of two. A budget summary was included showing no earned income and \$█ of unearned income was included in the FAP budget. The Notice reminded Respondent of the responsibility to report changes within 10 days. (Exhibit A, pp. 78-82)
8. On January █ 2021, a Notice of Case Action was issued to Petitioner approving FAP for a household size of two. A budget summary was included showing no earned income and \$█ of unearned income was included in the FAP budget. The Notice reminded Respondent of the responsibility to report changes within 10 days. (Exhibit A, pp. 83-87)
9. On March █ 2021, a Notice of Case Action was issued to Petitioner approving FAP for a household size of two. A budget summary was included showing no earned income and \$█ of unearned income was included in the FAP budget. The Notice reminded Respondent of the responsibility to report changes within 10 days. (Exhibit A, pp. 88-92)
10. On March █ 2021, a Notice of Case Action was issued to Petitioner approving FAP for a household size of two. A budget summary was included showing no earned income and \$█ of unearned income was included in the FAP budget. The Notice reminded Respondent of the responsibility to report changes within 10 days. (Exhibit A, pp. 93-97)
11. On September █ 2021, the Department received copies of Earnings Statements from Petitioner's employment with █ █ of Mid-Michigan for pay dates September 3, 2021 and September 17, 2021. (Exhibit A, pp. 16-19)
12. A report from The Work Number documents that Petitioner has been employed with █ █ of Mid-Michigan since November 2, 2020. Petitioner's

earnings from pay dates November 13, 2020 through June 21, 2024 were documented. (Exhibit A, pp. 20-24)

13. The Department verified Petitioner's income from Social Security benefits. (Exhibit A, pp. 25-29)
14. The Department determined that Petitioner was overissued FAP benefits for the period of April 2021, June 2021 through August 2021, and October 2021 in the amount of \$ [REDACTED] due to client error of failing to properly report earnings from employment with [REDACTED] (Exhibit A, pp. 3, 31-54, and 98-118)
15. On July [REDACTED] 2024, the Department sent Petitioner a Notice of Overissuance instructing her that a \$ [REDACTED] overissuance of FAP benefits occurred from April 1, 2021 to October 31, 2021 due to client error and would be recouped. (Exhibit A, pp. 129-134)
16. On July 24, 2024, the Department received Petitioner's request for a hearing protesting the recoupment of FAP benefits. (Exhibit A, pp. 6-10)

### **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, July 1, 2020, p. 9. Clients must also report changes in circumstance that potentially affect eligibility or benefit amount within 10 days. This includes 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. BAM 220, January 1, 2021, p. 7. A pended 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 overpayment. BAM 700, June 1, 2024, p. 1. An agency error is a type of overpayment or underissuance resulting from an incorrect action or failure to take action by the state agency. A client error is a type of overpayment or underissuance resulting from inaccurate reporting on the part of the household. BAM 700, p. 5. Agency and client errors are not pursued if the OP amount is equal to or less than \$250 per program. BAM 700 p. 5.

On September [REDACTED] 2020, Petitioner submitted a Redetermination for her FAP case. No employment income was reported. (Exhibit A, pp. 11-15). Numerous Notices of Case Action were issued between October 1, 2020 and March 15, 2021 regarding Petitioner's approval for FAP. Budget summaries were included showing no earned income and the amount of unearned income included in the FAP budget. The Notices reminded Respondent of the responsibility to report changes within 10 days. (Exhibit A, pp. 60-97)

On September [REDACTED] 2021, the Department received copies of Earnings Statements from Petitioner's employment with [REDACTED] [REDACTED] of Mid-Michigan for pay dates September 3, 2021 and September 17, 2021. (Exhibit A, pp. 16-19).

A report from The Work Number documents that Petitioner has been employed with [REDACTED] [REDACTED] of Mid-Michigan since November 2, 2020. Petitioner's earnings from pay dates November 13, 2020 through June 21, 2024 were documented. (Exhibit A, pp. 20-24). The Department also verified Petitioner's income from Social Security benefits. (Exhibit A, pp. 25-29).

The updated income information was utilized to re-determine eligibility for FAP during the overissuance period. The Department determined that Petitioner was overissued FAP benefits for the period of April 2021, June 2021 through August 2021, and October 2021 in the amount of \$ [REDACTED] due to client error of failing to properly report earnings from employment with [REDACTED] (Exhibit A, pp. 3, 31-54, and 98-118). Accordingly, on July [REDACTED] 2024, the Department sent Petitioner a Notice of Overissuance instructing her that a \$ [REDACTED] overissuance of FAP benefits occurred from April 1, 2021 to October 31, 2021 due to client error and would be recouped. (Exhibit A, pp. 129-134).

Petitioner asserted that she called the Department when she started working at [REDACTED] and reported the change with employment income. Petitioner looked to see if she could get the phone records to document her call to the Department. However, the records are not available that far back. Petitioner is an honest person and does not do illegal stuff. Petitioner is struggling right now. (Exhibit A, p. 7; Petitioner Testimony). The OEA testified that she reviewed the case record, which did not document any call or other contact from Petitioner reporting starting employment at [REDACTED] during the overissuance period. However, the OEA acknowledged that things were difficult for clients and Department employees during that time due to the COVID-19 public health emergency. The OEA indicated it was possible that Petitioner called but it was not documented. (OEA Testimony).

However, even if this had been a Department error of failing to act on Petitioner's call reporting the employment, recoupment would still occur. The OEA reviewed whether there would be any changes to the overissuance amount if this had been processed as an agency error, which would allow for the 20% disregard. It does not appear that this would have changed the overissuance determination. (OEA Testimony).

This Administrative Law Judge (ALJ) must review the Department's determination under the applicable Department policies. The ALJ has no authority to change or make any exception to Department policy. 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 overpayments caused by client or agency error when the amount is at least \$250 per program.

Overall, the evidence supports the Department's determination that Petitioner received an overpayment of FAP benefits for the period of April 2021, June 2021 through August 2021, and October 2021 in the amount of \$[REDACTED]. Therefore, the Department properly sought recoupment of a \$[REDACTED] overissuance of FAP benefits from Petitioner. However, based on Petitioner's credible testimony that she called the Department and reported the employment, the overpayment appears to be due to agency error.

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 \$[REDACTED] overpayment of FAP benefits for the period of April 2021, June 2021 through August 2021, and October 2021, which must be recouped. However, the Department did not act in accordance with Department policy when it processed the overpayment as a client error. The overpayment should be processed as an agency error.

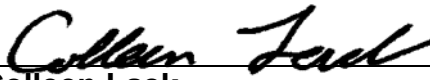
**DECISION AND ORDER**

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. Process the \$ [REDACTED] overpayment of FAP benefits for the period of April 2021, June 2021 through August 2021, and October 2021 as an agency error in accordance with Department policy.

CL/dm

  
\_\_\_\_\_  
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**  
Janice Collins  
Genesee County DHHS Union St  
District Office  
**MDHHS-Genesee-UnionSt-  
Hearings@michigan.gov**

**DHHS Department Rep.**  
Overpayment Establishment Section  
(OES)  
**MDHHS-RECOUPMENT-  
HEARINGS@Michigan.gov**

**HoldenM**

**DensonSogbakaN**

**BSC3HearingDecisions**

**MOAHR**

**Via-First Class Mail :**

**Petitioner**

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