



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: October 22, 2024  
MOAHR Docket No.: 24-010571  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Aaron McClintic**

**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 16, 2024, from Lansing, Michigan. The Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by Kathleen Zewatsky. Department Exhibit 1, pp. 1-67 was received and admitted.

**ISSUE**

Did the Department properly determine that Petitioner received an overissuance of Food Assistance Program (FAP) benefits due to client 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 a recipient of FAP benefits.
2. Petitioner allegedly had increases to her employment income with Five Below that were above the simplified reporting amount that she did not report.
3. The Department did not budget Petitioner's increased employment income with Five Below.
4. On September [REDACTED] 2024, Notice of Overissuance was sent to Petitioner alleging that he received an overissuance of FAP benefits from March 1, 2022, through March 31, 2022, in the amount of \$[REDACTED] due to client error. (Ex. 1, pp. 7-8)

5. On September █ 2024, Petitioner requested hearing disputing the finding of overissuance.
6. Petitioner's March █ 2022, pay check for \$█ included a \$█ bonus payment.

### **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.

#### **Client Error**

A type of overpayment (OP) or underissuance resulting from inaccurate reporting on the part of the household. The establishment of a client error overpayment claim does not rule out the possibility of a future finding of intentional program violation. BAM 715

#### **OVERPAYMENT AMOUNT**

FIP, SDA, RCA, CDC and FAP

The amount of benefits issued to the client, household, or provider in excess of what the recipient(s) was/were eligible to receive. BAM 720

#### **WAGES**

All Programs

Wages are the pay an employee receives from another individual organization or S-Corp/LLC. Wages include salaries, tips, commissions, bonuses, severance pay, and flexible benefit funds not used to purchase insurance. BEM 501

#### **FIP, SDA, RAP, CDC and FAP**

Determine budgetable income using countable, available income for the benefit month being processed. BEM 505

#### **Non-Child Support Income**

Using Past Income

Use past income to prospect income for the future unless changes are expected: • Use income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month. Note: The 30-day period used can begin up to 30 days

before the interview date or the date the information was requested. Exception: For FAP only, when processing a semi-annual contact, the 30-day period can begin up to 30 days before the day the MDHHS-1046, Semi-Annual Contact Report, is received by the client or the date a budget is completed. Any 30-day period that best reflects the client's prospective income within these guidelines can be used. Discard a pay from the past 30 days if it is unusual and does not reflect the normal, expected pay amounts. Document which pay(s) is being discarded and why. For example, the client worked overtime for one week and it is not expected to recur. BEM 505

In this case, the only month the Department is pursuing an overissuance for is March 2022. The Department attributed \$[REDACTED] in employment income to Petitioner based on her earnings in March 2022 and a check of \$[REDACTED] and a check of \$[REDACTED]. Petitioner credibly testified that the higher check included a \$[REDACTED] bonus payment that was irregular and was not expected to recur. Based on BEM 505 since this \$[REDACTED] bonus payment was unusual and did not reflect Petitioner's normal, expected pay amounts it should have been discarded.

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 included Petitioner's \$[REDACTED] bonus payment in March 2022 in determining Petitioner's FAP eligibility and benefit amount.


### **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. Rebudget Petitioner's FAP benefit amount for March 2022 removing her \$[REDACTED] bonus payment from the budget.
2. Delete the FAP overissuance if it is determined that Petitioner was eligible for FAP and did not receive an overissuance.

AM/dm

  
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**Aaron McClintic**  
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 :**

**Agency Representative**  
Kathleen Zewatsky  
Overpayment Establishment Section  
(OES)  
**MDHHS-Recoupment-  
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Heather Dennis  
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**BSC4HearingDecisions**

**MOAHR**

**Via-First Class Mail :**

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