



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: September 29, 2016
MAHS Docket No.: 15-022188
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Darryl Johnson

HEARING DECISION

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, and in accordance with Titles 7, 42 and 45 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16 and 45 CFR 235.110; and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a telephone hearing was held on September 28, 2016, from Lansing, Michigan. The Department of Health and Human Services (Department) was represented by [REDACTED], Recoupment Specialist.

Petitioner did not appear and the hearing was held in Petitioner's absence pursuant to 7 CFR 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3178(5).

ISSUE

Did Petitioner receive an over-issuance (OI) of Food Assistance Program (FAP) benefits?

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 from the Department.
2. The Department alleges Petitioner received a FAP OI during the period August 1, 2016, through September 30, 2015, due to Department error.
3. The Department alleges that Petitioner received \$ [REDACTED] OI that is still due and owing to the Department.

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), and Department of Health and Human Services Reference Tables Manual (RFT).

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 to .3015.

In this case, Petitioner applied for FAP on August 30, 2015 (Exhibit 1 Pages 18-32). When she applied, she was asked whether anyone in her household had been convicted of a drug felony, and she answered "No." Based upon her representation, she was provided FAP. The Department subsequently learned that she had been convicted of at least one drug-related felony. Records from the Michigan Department of Corrections (MDOC) (Pages 13-15) show that Petitioner has several convictions, one of which is a felony conviction of possession of a controlled substance. The date of her offense is October 24, 2008. The Department also submitted as evidence an email (Page 11) which indicates she has other convictions, including:

- [REDACTED] – cocaine, [REDACTED];
- [REDACTED] – possession of cocaine, [REDACTED];
- [REDACTED] – cocaine and marijuana, [REDACTED];
- [REDACTED] – cocaine, [REDACTED];

According to the email, someone from the Department was given access to a pre-sentence investigation by Petitioner's parole agent. That investigation was not submitted, nor was there any testimony from the parole agent. There were no documents submitted. There is no reliable evidence to establish that these were felony convictions, even if the dates, charges, and locations are taken at face value. The charge in [REDACTED], is questionable because it does not show up on the MDOC printout which would presumably list all of her felony convictions.

According to BEM 203 (10/1/15), people convicted of certain crimes, fugitive felons, and probation/parole violators are not eligible for assistance.

BEM 203 at page 2 provides that for FAP, "[a]n individual convicted of a felony for the use, possession, or distribution of controlled substances **two or more times** will be permanently disqualified if both offenses occurred after August 22, 1996." (Emphasis added).

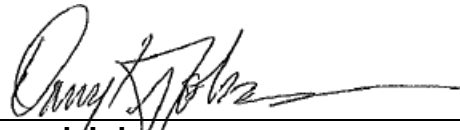
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department did not establish a FAP benefit OI to Petitioner. While it is possible that she has had two or more convictions, the Department has not provided sufficient evidence to establish that as a fact. If the Department is able to establish that she has, in fact, had two or more drug-related felony convictions for offenses that occurred after August 22, 1996, Petitioner would be subject to a lifetime disqualification, but that is not a finding made here.

DECISION AND ORDER

Accordingly, the Department is **REVERSED**.

The Department is **ORDERED** to cease collection procedures on the alleged OI.

DJ/mc



Darryl Johnson
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

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 Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS 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. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

[Redacted]

Petitioner

[Redacted]