



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.: 16-004278
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 was represented by [REDACTED], Recoupment Specialist of the Office of Inspector General (OIG).

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)?

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 March 1, 2015, through November 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.

Petitioner applied for FAP on March 6, 2015, (Exhibit 1 Pages 4-20) and in the application he was asked whether anyone in the group had any drug felony convictions (Page 10), to which he replied that he had such a conviction. He was provided with FAP. He was NOT asked whether he had two or more such convictions, even though that is a question that is commonly asked during the application process.

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 in separate periods** will be permanently disqualified if both offenses occurred after August 22, 1996.” (Emphasis added).

BEM 203 gives two examples to help in understanding the application of this policy. The first is:

Example: Matthew Doe was found to have convictions for the use of a controlled substance on April 1, 2012 and for the distribution of a controlled substance on April 1, 2012. This would count as one conviction since it is on the same day. Policy for the 1st offense for a drug-related felony will be followed.

The Department is known to interpret BEM 203 as applying to convictions that occur after August 22, 1996. The policy as established by federal law applies to convictions for offenses that occur on or after August 22, 1996. It is possible that someone could have been arrested for an offense before August 22, 1996, but not convicted until on or after August 22, 1996. In 21 USC 862a(d)(2), the federal code states:

(2) Inapplicability to convictions occurring on or before August 22, 1996

Subsection (a) of this section shall not apply to a conviction if the conviction is for conduct occurring on or before August 22, 1996. (Emphasis added.)

The Department submitted evidence (Pages 24-26) from the Michigan Department of Corrections (MDOC) that shows Petitioner has several felony convictions. He has two felony convictions for delivery and manufacture of a controlled substance (Page 25), but both of those convictions arose out of offenses dated [REDACTED]. Drawing from the example above, in this case Petitioner has only one relevant conviction and therefore he is not disqualified.

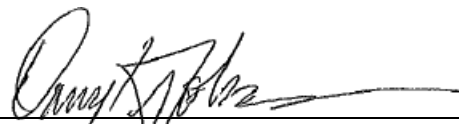
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department did not establish a FAP benefit OI to Petitioner.

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]