



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: October 12, 2016
MAHS Docket No.: 16-005065
Agency No.: [REDACTED]
Petitioner: MDHHS
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

DEBT ESTABLISHMENT HEARING DECISION

Upon the request for a hearing by the Michigan Department of Health and Human Services (MDHHS), 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 October 3, 2016, from Detroit, Michigan. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], recoupment specialist. Respondent appeared and testified. [REDACTED], Respondent's spouse, testified on behalf of Respondent.

ISSUE

The issue is whether MDHHS established a debt against Respondent for an alleged over-issuance of 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. As of May 2015, Respondent's spouse was convicted of multiple drug-related felonies since August 22, 1996.
2. Over the period from May 2015 through April 2016, Respondent was an ongoing Food Assistance Program (FAP) recipient.
3. Over the period from May 2015 through April 2016, MDHHS factored Respondent's spouse as a FAP group member.

4. Over the period from May 2015 through April 2016, Respondent received [REDACTED] in FAP benefits.
5. Over the period from May 2015 through April 2016, Respondent should have received [REDACTED] in FAP benefits.
6. On [REDACTED], MDHHS mailed Respondent a Notice of Overissuance alleging Respondent received [REDACTED] in over-issued FAP benefits for the period from May 2015 through April 2016, due to agency error.
7. On [REDACTED], Respondent requested a hearing to dispute the alleged overissuance of benefits (see Exhibit 1, p. 6).
8. On [REDACTED], MDHHS requested a hearing to establish a debt of [REDACTED] against Respondent.

CONCLUSIONS OF LAW

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

MDHHS requested a hearing for the purpose of establishing a debt against Respondent. [MDHHS] may request a hearing to... establish an intentional program violation and disqualification... [or to] establish a collectable debt on closed cases. BAM 600 (October 2015), p. 4.

MDHHS requests a debt collection hearing when the grantee of an inactive program requests a hearing after receiving the DHS-4358B, Agency and Client Error Information and Repayment Agreement. BAM 725 (October 2015), pp. 16-17. Active recipients are afforded their hearing rights automatically, but MDHHS must request hearings when the program is inactive.... *Id.*, p. 17.

All cases that contain an adult member from the original overissuance group and are active for the program in which the overissuance occurred are liable for the overissuance and subject to administrative recoupment. *Id.*, p 1. Overissuances on inactive programs are recouped through cash repayment processes. *Id.* It was not disputed that Respondent was an inactive benefit recipient at the time MDHHS requested a hearing.

MDHHS presented a Notice of Overissuance (Exhibit 1, pp. 64-65) dated [REDACTED]. The notice alleged Respondent received [REDACTED] in over-issued FAP benefits due to MDHHS' error. The alleged overissuance period was from May 2015 through April 2016.

[For FIP and FAP benefits,] when the client group or CDC provider receives more benefits than entitled to receive, Michigan Department of Health and Human Services (MDHHS) must attempt to recoup the overissuance. BAM 700 (January 2016), p. 1. Repayment of an overissuance is the responsibility of:

- Anyone who was an eligible, disqualified, or other adult in the program group at the time the overissuance occurred.
- A FAP-authorized representative if they had any part in creating the FAP overissuance

Id.

Recoupment policies and procedures vary by program and overissuance type. BAM 715 (October 2015), p. 1. When a potential overissuance is discovered, [MDHHS is to] do all of the following:

1. Take immediate action to correct the current benefits; see BAM 220, Case Actions, for change processing requirements.
2. Obtain initial evidence that an overissuance potentially exists.
3. Determine if it was caused by department, provider or client actions. [and]
4. Refer all client errors to the RS [recoupment specialist] within 60 days of suspecting or if a suspected overissuance exists

MDHHS must establish an overissuance of benefits in order to establish a debt against Respondent. MDHHS alleged Respondent received an overissuance of FAP benefits because Respondent's spouse was wrongly included as a benefit group member. MDHHS alleged Respondent's spouse was ineligible due to previous drug-related felonies.

[For FIP and FAP benefits,] people convicted of certain crimes and probation or parole violators are not eligible for assistance. BEM 203 (October 2015), p. 1. An 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. *Id.*

MDHHS presented a Register of Actions (Exhibit 1, pp. 23-35) from a [REDACTED] County court. The document verified a conviction for "CNTRL SUB POSSESS <25 GRM" based on MCL 333.7403(2)(a)(5). The adjudication date was [REDACTED].

MDHHS presented a Register of Actions (Exhibit 1, pp. 36-43) from a [REDACTED] County court. The document verified a conviction for "CNTR SUB DEL LESS 50GRAM" based on MCL 333.7413 and 333.7401(2)(a)(4). The adjudication date was [REDACTED]
[REDACTED]

Respondent's spouse's testimony conceded he was convicted of multiple drug related felonies since August 1996. It is found Respondent's spouse was not eligible to receive FAP benefits after September 2008.

MDHHS presented Respondent's FAP benefit history (Exhibit 1, pp. 44-45). The history verified a total of [REDACTED] in FAP benefits issued from May 2015 through April 2016. It was not disputed the original benefit issuances factored Respondent's spouse as a group member.

MDHHS presented OI budgets and worksheets (Exhibit 1, pp. 46-61) from May 2015 through April 2016. The documents calculated the amount of FAP benefits that should have been issued to Respondent, after excluding her spouse as a group member. The budgets calculated Respondent should have received a total of [REDACTED] in FAP benefits.

Respondent contended MDHHS incorrectly calculated the overissuance. Respondent contended MDHHS should have calculated the overissuance by dividing the original benefit issuance by the number of group members to calculate the amount of benefits given to each group member.

BEM 556 details the procedures for determining FAP eligibility. In short, MDHHS factors group members, countable income, and countable expenses to determine a group's net income for purposes of FAP eligibility. The net income, along with the group size, determines the benefit issuance (see RFT 260). The proper FAP benefit issuance is not necessarily going to be proportionate to the group size. It is found MDHHS correctly calculated Respondent should have received a total of [REDACTED] in FAP benefits over the OI period.

Subtracting the amount of benefits Respondent received from the amount of benefits Respondent should have received results in an overissuance of [REDACTED] in FAP benefits. It is found MDHHS established an overissuance in [REDACTED] in FAP benefits from the period from May 2015 through April 2016.

It was not disputed that Respondent honestly reported to MDHHS that her husband had a history of drug-related felonies and that any resulting overissuance was the fault of MDHHS. Respondent contended MDHHS should bear the financial responsibility for their own error.

MDHHS policy categorizes overissuances into 3 different types: client error, agency error, and intentional fraud (see BAM 700). Client and Agency errors are not pursued if the estimated amount is less than \$250 per program. BAM 700, p. 9.

Respondent essentially contended principles of equity preclude MDHHS from pursuing overissuances caused by agency error. Respondent's contention is reasonable, however, equitable principles are not applicable to an administrative decision analysis. The only consideration in whether MDHHS may pursue an overissuance caused by

agency error is whether the over-issued benefit amount exceeded \$250; MDHHS established an overissuance exceeding the \$250 threshold. It is found MDHHS established a debt against Respondent for an overissuance of [REDACTED] in FAP benefits over the period from May 2015 through April 2016.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established a debt against Respondent for [REDACTED] in FAP benefits over-issued over the period from May 2015 through April 2016. The actions taken by MDHHS are **AFFIRMED**.

CG/hw



Christian Gardocki
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]

[REDACTED]

Respondent

[REDACTED]