



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 10, 2016
MAHS Docket No.: 16-006049
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 October 4, 2016, from Lansing, Michigan. The Department was represented by [REDACTED], Recoupment Specialist. The Petitioner did not appear.

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 October 1, 2011, through October 31, 2012, due to Department error.
3. The Department alleges that Petitioner received \$ [REDACTED] OI that is still due and owing to the Department.
4. On April 25, 2016, the Department mailed a Notice of Overissuance (Exhibit 1 Pages 5-7), informing Petitioner of the alleged OI.

5. On May 3, 2016, the Department received Petitioner's hearing request, protesting the OI.

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.

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 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 presented evidence that Petitioner was an on-going FAP recipient. Petitioner reported that he had two or more drug-related felony convictions, yet the Department provided him with benefits. The Department submitted evidence (Exhibit 2) of a lengthy criminal history. The only relevant convictions would be those for drug-related felonies occurring after August 22, 1996. His convictions after that date include:

- a. [REDACTED]: Misdemeanor - Possession of controlled substance
- b. [REDACTED]: Misdemeanor – Operating while intoxicated

- c. [REDACTED]: Felony – Operating while intoxicated
- d. [REDACTED]: Felony – Conspiracy to obtain controlled substance by fraud
- e. [REDACTED]: Misdemeanor – Attempted to obtain controlled substance by fraud
- f. [REDACTED]: Felony - Obtain controlled substance by fraud

The evidence is sufficient to establish that Petitioner had two or more drug-related felony convictions occurring after August 22, 1996. Because of those felonies, he was not eligible to receive any FAP. Although he reported that he had such a history, the Department awarded him benefits.

As stated in BAM 700 (1/1/16) p 1, "When a client group receives more benefits than it is entitled to receive, MDHHS must attempt to recoup the overissuance." That is true regardless of whether the error was a "client error" or an "agency error." The policy contains the imperative "must attempt to recoup the overissuance." There is no discretion on the part of the Department or the Administrative Law Judge.

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department established a FAP benefit OI to Petitioner totaling \$[REDACTED].

DECISION AND ORDER

Accordingly, the Department is **AFFIRMED**.

The Department is ORDERED to initiate collection procedures for a \$[REDACTED] OI in accordance with Department policy.

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]

Respondent

[REDACTED]