



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: January 17, 2017
MAHS Docket No.: 16-018431
Agency No.: [REDACTED]
Petitioner: [REDACTED]
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 January 9, 2017, from Detroit, Michigan. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], recoupment specialist, and [REDACTED], 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 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. Respondent was convicted of a drug-related felony on [REDACTED].
2. Respondent was convicted of a drug-related felony on [REDACTED]
3. Over the period from [REDACTED], Respondent was a member of a FAP benefit group.

4. On [REDACTED], MDHHS mailed Respondent a Notice of Overissuance alleging Respondent received [REDACTED] in over-issued FAP benefits for the period from [REDACTED], due to agency error.
5. On [REDACTED], Respondent requested a hearing to dispute the alleged overissuance of benefits.
6. 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.

MDHHS presented a Notice of Overissuance (Exhibit 1, pp. 26-27) dated [REDACTED], [REDACTED]. The notice alleged Respondent received [REDACTED] in over-issued FAP benefits due to MDHHS' error. The alleged overissuance period was from [REDACTED] [REDACTED].

Respondent's primary argument was that he should not be responsible for the repayment of benefits wrongly issued by MDHHS. The argument is logical, but it is not supported by MDHHS policy.

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 [REDACTED] per program. BAM 700, p. 9.

It was not disputed the alleged OI in the present case exceeded [REDACTED]. Thus, MDHHS can pursue the OI regardless of fault.

[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 was ineligible due to previous drug-related felonies.

MDHHS presented a Register of Actions (Exhibit 1, p. 6) from a State of Michigan court. The court document stated Respondent was convicted of delivery/manufacture of a controlled substance. The crime is a felony under MCL 333.7401(2)(a)(4). An offense date was not apparent. A conviction date of [REDACTED], was stated.

MDHHS presented a Register of Actions (Exhibit 1, p. 7) from a State of Michigan court. The court document stated Respondent was convicted of possession of controlled substances (narcotics or cocaine) of less than 50 grams. An offense date was not apparent. A conviction date of [REDACTED], was stated.

MDHHS presented a portion of Respondent's FAP benefit history (Exhibit 1, p. 9). The history listed various FAP issuances from [REDACTED] totaling [REDACTED].

MDHHS presented an Issuance Summary (Exhibit 1, p. 17) and corresponding FAP OI budgets (Exhibit 1, pp. 18-25) from [REDACTED]. The documents calculated the amount of FAP benefits that should have been issued to Respondent's FAP group after excluding Respondent as a group member. The budgets calculated

Respondent's group would have received a total of [REDACTED] in FAP benefits if Respondent was a disqualified member.

[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 [REDACTED]. *Id.*

MDHHS established that Respondent was convicted of multiple drug-related felonies after [REDACTED]. MDHHS policy requires that the drug-related *offenses* to have occurred after [REDACTED]. The specific reference to *offenses* is indicative that the offense date, not the conviction date, is relevant.

MDHHS verified Respondent's first conviction occurred in [REDACTED] [REDACTED]. The conviction date is sufficiently close to [REDACTED], that it is reasonably possible that Respondent committed the offense before [REDACTED]. Such a finding was consistent with Respondent's unrebutted testimony that he recalled being arrested for the offense in [REDACTED].

It is found MDHHS failed to establish Respondent committed multiple drug-related felonies after [REDACTED]. Thus, the alleged OI based on Respondent's history of multiple drug-related offenses since [REDACTED] is reversible.

It should be noted that the findings of this decision are limited to the hearing's jurisdiction. The hearing's jurisdiction is limited to whether Respondent received an OI of FAP benefits. Thus, Respondent's past, present, or future FAP eligibility is not addressable by this administrative decision.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS failed to establish a debt against Respondent related to over-issued FAP benefits. It is ordered that MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

- (1) cease further debt collection actions against Respondent related to a FAP benefit overissuance from [REDACTED] related to previous drug-related felonies occurring after [REDACTED]; and
- (2) issue FAP benefits to Respondent, if any, that have already been recouped and/or repaid.

The actions taken by MDHHS are **REVERSED**.

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]
[REDACTED]

[REDACTED]
[REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]