



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: February 10, 2017  
MAHS Docket No.: 16-019468  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Kevin Scully

### **HEARING DECISION**

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, telephone hearing was held on February 08, 2017, from Lansing, Michigan. The Petitioner represented himself and his mother, [REDACTED]. The Department was represented by [REDACTED] Recoupment Specialist.

### **ISSUE**

Did the Department of Health and Human Services (Department) properly determine that Petitioner received an overissuance of Food Assistance Program (FAP) benefits that must be recouped?

### **FINDINGS OF FACT**

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On October 1, 2015, the Department received Petitioner's Food Assistance Program (FAP) application. Exhibit A, p 4.
2. On his October 1, 2015, Petitioner reported to the Department that he had been convicted of more than one drug-related felony with each offense occurring after August 22, 1996. Exhibit A, p 21.
3. Petitioner received Food Assistance Program (FAP) benefits totaling \$ [REDACTED] from January 1, 2016, through December 31, 2016. Exhibit A, pp 30-31.
4. On July 8, 2002, Petitioner pled guilty to Possession with Intent to Deliver Marijuana. Exhibit A, p 26.

5. On July 27, 2005, Petitioner pled guilty to Possession of Xanax, and Possession of Vicodin. Exhibit A, p 27.
6. On December 15, 2016, the Department sent Petitioner a Notice of Overissuance (DHS-4358A), informing that he had received a \$ [REDACTED] overissuance of Food Assistance Program (FAP) benefits. Exhibit A, pp 57-58.
7. On December 27, 2016, the Department received Petitioner's request for a hearing protesting the recoupment of his Food Assistance Program (FAP) benefits. Exhibit A, p 3.

### **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), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

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-.3011.

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. Department of Health and Human Services Bridges Eligibility Manual (BEM) 203 (October 1, 2015), p 2.

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. Department of Human Services Bridges Administrative Manual (BAM) 700 (October 1, 2016), p 1.

For Department errors, the overissuance period begins the first month when benefit issuance exceeds the amount allowed by policy, or 12 months before the date the overissuance was referred to the RS, whichever 12 month period is later. Department of Health and Human Services Bridges Administrative Manual (BAM) 705 (January 1, 2016), p 5.

On October 1, 2015, the Department received Petitioner's FAP application. Petitioner reported to the Department that he had been convicted of more than one drug-related felony. Petitioner does not dispute that he has been convicted of more than one drug-related felony with each offense occurring after August 22, 1996.

Petitioner should have been permanently disqualified from FAP immediately upon the Department's receipt of his application for assistance on October 1, 2015. Due to

Department error, Petitioner's benefits were not sanctioned, but instead he was approved and received FAP benefits for over a year.

On December 15, 2016, the Department sent Petitioner a Notice of Overissuance (DHS-4358A) following its determination that he had received FAP benefits that he was not eligible for. Petitioner was actually not eligible for the benefits he received since his application date of October 1, 2015, but Department policy limits the Department's recoupment of overissuance caused by Department error to the 12 months before the overissuance was referred to the recoupment specialist.

Petitioner testified that he told his caseworker about his drug-related felony convictions and his belief that he was not eligible for FAP benefits.

The Department does not alleged that Petitioner failed to accurately report his circumstances to the Department, or that the overissuance was caused by Department error.

However, Petitioner received FAP benefits that he was not eligible for and the Department is required to recoup those benefits.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department acted in accordance with Department policy when it determined that Petitioner received a \$ [REDACTED] overissuance of Food Assistance Program (FAP) benefits due to Department error that must be recouped.

### **DECISION AND ORDER**

Accordingly, the Department's decision is **AFFIRMED**.

KS/nr

  
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Kevin Scully  
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]