



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

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Date Mailed: April 24, 2017  
MAHS Docket No.: 16-019525  
Agency No.: ██████████  
Petitioner: ██████████  
Respondent: ██████████

**ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris**

**HEARING DECISION**

Upon the request for a hearing by the Department of Health and Human Services (Department), 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 ██████████, from Detroit, Michigan. The Department was represented by ██████████, Recoupment Specialist.

Respondent did not appear. This matter having been initiated by the Department and due notice having been provided to Respondent, the hearing was held in Respondent's absence in accordance with Department of Health and Human Services Bridges Administrative Manual (BAM) 725 (October 1, 2016), pp. 16-17.

**ISSUE**

Did Respondent receive an overissuance (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. Respondent was a recipient of FAP benefits from the Department.
2. The Department alleges Respondent received an FAP OI during the period ██████████ through ██████████, due to Respondent's error in failing to report to the Department that he was convicted to two drug-related felonies.

3. The Department sent the Respondent a Notice of Overissuance for FAP on [REDACTED], alleging an OI of [REDACTED] due to Client Error due to failing to report that you have more than one drug-related felony conviction. [Exhibit P.]
4. The Department alleges that Respondent received an OI of [REDACTED] that is still due and owing to the Department.
5. The Respondent requested a timely hearing on [REDACTED], protesting the Departments actions.

### **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.

In this case, the Department seeks to recoup FAP benefits issued to the Respondent, which it alleges the Respondent was not entitled to receive due to the Respondent having two prior drug-related felony convictions. BEM 203, (October 1, 2015). The Department alleged that the OI resulted due to a Client Error as the Department was notified at the time of the [REDACTED], application by the Respondent that he had only one drug-related felony conviction and answered “No” to the question on the application, “Convicted more than once?” [See Exhibit A, p. 22.] The Department alleges that during the period [REDACTED] through [REDACTED], the Petitioner received [REDACTED] in FAP that he was ineligible to receive. [Exhibits F, G, H, I, J, K, L, pp. 43-70.]

BEM 203 provides as that recipients of FAP are disqualified from receiving benefits after two drug-related felony convictions:

#### **FIP and FAP**

##### **1st Offense**

A person who has been convicted of a felony for the use, possession, or distribution of controlled substances is disqualified if:

- Terms of probation or parole are violated, **and**
- The qualifying conviction occurred after August 22, 1996.

If an individual is not in violation of the terms of probation or parole:

- FIP benefits must be paid in the form of restricted payments.
- Receipt of FAP benefits requires an authorized representative.

## **2nd Offense**

**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.** BEM 203(October 1, 2015), p. 2. Originally effective October 11, 2011.

The Department provided evidence which demonstrated that Respondent had been convicted of two drug-related felonies after [REDACTED]. The Department presented a Judgement of Sentence Court Record for the [REDACTED] County Circuit Court establishing that Petitioner was convicted of a drug-related felony on [REDACTED] [Exhibit N, p. 72.] The Respondent was also convicted of a drug-related felony on [REDACTED], in the [REDACTED] County Circuit Court. [Exhibit N, p. 73.] Based upon the evidence presented, the Respondent was ineligible for FAP Benefits after the second felony drug-related conviction on [REDACTED], and thus, was ineligible to receive FAP benefits when he applied on [REDACTED], FAP application.

## **Overissuance**

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. Individuals convicted of certain crimes, such as trafficking and drug-related felonies; probation or parole violators; and fugitive felons are not eligible for FAP or SDA assistance. BEM 203 (October 2015), p. 1. In this case the Respondent reported only one drug felony and contends he told his caseworker about his felony convictions, however, that does not negate the fact that Respondent received FAP benefits which he was not entitled to receive as he was not eligible.

In this case, the Department is seeking an OI related to benefits issued from [REDACTED] through [REDACTED]. The Department alleged that the OI amount is [REDACTED]. The Department presented Respondent's Benefit Summary Inquiry, which showed that Respondent was issued FAP benefits in the amount of [REDACTED] during the period. [See Exhibit M, p. 71.] In addition, the Department presented FAP budgets for each of the months [REDACTED] through [REDACTED], which were reviewed and are determined to be correct.

Respondent did not appear at the hearing. Therefore, Respondent failed to refute the evidence presented, which revealed that he had been convicted of two drug-related felonies since [REDACTED]. Additionally, 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]. BEM 203, p. 2. Had the Department been aware of Respondent's two drug-related felonies at the time of the [REDACTED] application, the application for FAP benefits would

have been denied. Accordingly, the Department established that Respondent was not entitled to benefits and as such, received an OI of FAP benefits in the amount of [REDACTED].

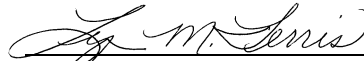
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department **did** establish an FAP benefit OI to Respondent totaling [REDACTED].

### **DECISION AND ORDER**

Accordingly, the Department is **AFFIRMED**.

The Department is **ORDERED** to initiate collection procedures for an OI of [REDACTED] in accordance with Department policy.

LMF/jaf



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**Lynn M. Ferris**  
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]

**Respondent**

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]