



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR



Date Mailed: June 28, 2017  
MAHS Docket No.: 17-007106  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

### **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 June 22, 2017, from Lansing, Michigan. [REDACTED] Recoupment Specialist (RS), appeared on behalf of the Department. Petitioner appeared and represented himself.

### **ISSUE**

Did the Petitioner receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?

### **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 past recipient of FAP benefits from the Department. [Department's Exhibit 1, p. 11].
2. Petitioner had two or more drug-related felonies that occurred after August 22, 1996 (January 6, 2014, and December 3, 2014). [Dept. Exh. 1, p. 1].
3. On November 13, 2015, Petitioner submitted an online application for FAP benefits. On the application, Petitioner indicated that he had been convicted of two or more drug-related felonies after August 22, 1996. [Dept. Exh. 1, p. 33].

4. The Department alleges Petitioner received an OI of FAP benefits during the period November 1, 2015, through October 31, 2016, due to the Department's error. [Dept. Exh. 1, p. 6].
5. The Department contends that the alleged FAP OI was discovered on or about March 8, 2017. [Dept. Exh. 1, p. 1].
6. The Department alleges that Petitioner received \$ [REDACTED] OI that is still due and owing to the Department. [Dept. Exh. 1, p. 6].
7. On April 3, 2017, the Department mailed Petitioner a Notice of Overissuance (DHS-4358-A), Overissuance Summary (DHS-4358-B), and Department and Client Error Information and Repayment Agreement (DHS-4358-C). [Dept. Exh. 1, pp. 6-10].
8. On April 19, 2017, Petitioner returned a signed and completed Hearing Request for Overissuance or Recoupment Action (DHS-4358-D) form, which contained a formal request for a hearing to dispute the proposed action. [Dept. Exh. 1, p. 5].
9. On June 2, 2017, the Department forwarded the matter to the Michigan Administrative Hearing System (MAHS).
10. On June 8, 2017, the MAHS issued a Notice of Debt Collection Hearing to all interested parties which scheduled a telephone hearing for June 22, 2017.

### CONCLUSIONS OF LAW

Department policies are contained in the Michigan Department of Health and Human Services (Department or MDHHS) 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.

When a client group receives more benefits than it is entitled to receive, MDHHS must attempt to recoup the overissuance. BAM 700 (10-1-2016), p. 1. An **overissuance** is the amount of benefits issued to the client group or CDC provider in excess of what it was eligible to receive. BAM 700, p. 1. **Recoupment** is a MDHHS action to identify and recover a benefit overissuance. BAM 700, p. 2.

BAM 700 indicates that the three types of overissuances are agency error, client error and CDC provider error. BAM 700, pp. 4-8. An **agency error** is caused by incorrect action (including delayed or no action) by MDHHS staff or department processes. BAM 700, p. 4. [Emphasis added]. For FIP, SDA, CDC and FAP, agency errors are not pursued if the estimated amount is less than \$250 per program. BAM 700, p. 5. For FIP, SDA and FAP, the agency error threshold was raised to \$250 from \$125 with an effective date of December 1, 2012. BAM 700, p. 5. A **client error** occurs when the client received more benefits than they were entitled to because the client gave incorrect or incomplete information to the department. BAM 700, p. 6. [Emphasis added]. A client error also exists when the client's timely request for a hearing result in deletion of a MDHHS action, **and any of the following occurred:** (1) the hearing request is later withdrawn; (2) MAHS denies the hearing request; (3) the client or administrative hearing representative fails to appear for the hearing and MAHS gives MDHHS written instructions to proceed; and (4) the hearing decision upholds the department's actions. BAM 700, p. 6. [Emphasis in original].

BAM 725 (10-1-2016) governs collection actions and explains repayment responsibility, Benefit Recovery System data management, and the various collection processes used by MDHHS.

For all programs, 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 or a FAP-authorized representative if they had any part in creating the FAP overissuance. BAM 725, p. 1.

The rules for active and inactive programs are different. 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. BAM 725, p. 3. [Emphasis added]. Overissuances on **inactive** programs are recouped through cash repayment processes. Collection notices are sent to the household on the inactive case. BAM 725, p. 3. [Emphasis added].

For FIP, SDA, CDC, MA and FAP, 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. Active recipients are afforded their hearing rights automatically, but MDHHS must request hearings when the program is inactive. BAM 725, p. 3.

Department policy provides that an individual convicted of a felony for the use, possession, or distribution of controlled substances two or more times will be permanently disqualified from FAP benefits if both offenses occurred after August 22, 1996. BEM 203 (10-1-2015), p. 2. [Emphasis added].

During the hearing, the Department RS testified that due to an agency or department error, Petitioner received an overissuance of FAP benefits when he was not eligible. According to the RS, Petitioner had reported on an assistance application that he had

two or more drug-related felonies, but the Department erroneously issued Petitioner with FAP benefits despite the fact that he was ineligible. Petitioner testified that when he applied for assistance on May 27, 2016, his caseworker was aware that he had the drug felony convictions based on the Michigan Department of Corrections (MDOC) Offender Tracking Information System (OTIS). Petitioner did not dispute that he received an overissuance due to an agency error nor did he dispute the Department's calculation of the overissuance.

The Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. Here, the Department's overissuance budget documents established that Petitioner received FAP benefits during the above OI period in the amount of \$ [REDACTED]. The record also shows that the FAP OI was due to an agency error because the Department failed to properly and correctly enter onto Bridges that Petitioner was ineligible for FAP due to having two or more drug-related felony convictions. Therefore, the material, competent and substantial evidence on the whole record shows that Petitioner did receive an OI of FAP benefits in the amount of \$ [REDACTED] and the Department may recoup this OI.

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that Petitioner received an OI of FAP benefits in the amount of \$ [REDACTED] due to an agency error.


### **DECISION AND ORDER**

Accordingly, the Department is **AFFIRMED**.

IT IS ORDERED that the Department **may** initiate collection procedures for a \$ [REDACTED] FAP OI in accordance with Department policy.

IT IS SO ORDERED.

CAP/mc



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**C. Adam Purnell**  
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]