RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[redacted]

Date Mailed: September 29, 2017
MAHS Docket No.: 17-009276
Agency No.: [redacted]
Petitioner: OIG
Respondent: [redacted]

ADMINISTRATIVE LAW JUDGE: Vicki Armstrong

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

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, 42 CFR 431.230(b), 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 September 6, 2017, from Lansing, Michigan. Respondent personally appeared and testified.

The Department was represented by [redacted], Regulation Agent of the Office of Inspector General (OIG). [redacted] testified on behalf of the Department. The Department submitted 28 exhibits which were admitted into evidence.

ISSUES

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

2. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?

3. Should Respondent be disqualified from receiving FAP benefits for 12 months?

FINDINGS OF FACT

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

1. The Department's OIG filed a hearing request on [redacted], to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. [Dept. Exh. 1].

2. Respondent was a recipient of FAP benefits issued by the Department. [Dept. Exh. 26-27].

3. Respondent was arrested and incarcerated in the [redacted] County Jail on [redacted]. [Dept. Exh. 1, 3, 22-23].

4. Respondent was released from [redacted] County Jail on [redacted]. [Dept. Exh. 3, 24].

5. The FAP Purchase History shows purchases were made with Respondent's EBT card from [redacted], through [redacted]. [Dept. Exh. 25].

6. Respondent personally appeared and testified that he had given his girlfriend his EBT card to use while he was incarcerated because he did not know that he could not let his girlfriend use the card. [Testimony of [redacted], [redacted]].

7. The Department's OIG indicates that the time period it is considering the OI period is [redacted], through [redacted]. [Dept. Exh. 1, 3, 26-27].

8. During the OI period, Respondent's FAP Purchase History shows $[redacted] in FAP benefits from the State of Michigan were used. The Department alleges that Respondent was not entitled to benefits during this time period and Respondent received an OI in the amount of $[redacted]. [Dept. Exh. 1, 3, 26-27].

9. A Notice of Hearing was mailed to Respondent at the last known address and was not returned by the US Post Office as undeliverable.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), Adult Services Manual (ASM), and 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, the Michigan Department of Health and Human Services (MDHHS) must attempt to recoup the overissuance. BAM 705, p 1 (10/1/2016).

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. Bridges will collect from all adults who were a member of the case. Administrative recoupment may be deducted on more than one case for a single overissuance. BAM 725, p 1 (1/1/2017).

An overissuance is the amount of benefits issued to the client group in excess of what they were eligible to receive. BAM 705, p 1. When the client group or CDC provider receives more benefits than entitled to receive, Michigan Department of Health and Human Services (MDHHS) or Michigan Department of Education (MDE) must attempt to recoup the overissuance. BAM 725, p 1.

In this case, Respondent was incarcerated from [redacted], through [redacted]. While Respondent was incarcerated, his FAP benefits were used. The Department failed to present any evidence that Respondent received or attempted to receive any consideration for the use of his FAP benefits.

Based on the evidence and testimony available during the hearing, the Department has established that Respondent received a $[redacted] FAP OI, which the Department is required to recoup.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV.

2. Respondent did receive an OI of FAP benefits in the amount of $[redacted].

The Department is ORDERED to initiate recoupment/collection procedures for the amount of $[redacted] in accordance with Department policy.

VLA/bb

Vicki Armstrong
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]

Respondent

[redacted]