



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]

Date Mailed: January 17, 2018  
MAHS Docket No.: 17-013944  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Denise McNulty**

**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, 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 January 2, 2018, from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG) and [REDACTED], Recoupment Specialist. The Respondent represented herself and was accompanied by her husband, [REDACTED], a witness.

The record in MAHS Docket Number 17-003059 was incorporated herein by stipulation of all parties.

**ISSUE**

Did the Department properly determine that there was an Overissuance (OI) of Food Assistance Program (FAP) benefits for which the Department was entitled to recoupment and/or collection?

**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 an ongoing recipient of FAP benefits for a group size of two, which included the Petitioner and her spouse.

2. In December 2015, the Department became aware that Petitioner's spouse had two felony drug-related convictions and is permanently disqualified for benefits per policy, BEM 203.
3. Petitioner received FAP benefits, for a group size of two, totaling \$ [REDACTED] from March 1, 2016, through March 31, 2017. [Exhibit B, p. 69.]
4. On October 10, 2017, the Department sent Petitioner a Notice of Overissuance notifying Petitioner that she received an OI in FAP benefits due to Agency error.
5. The Department alleged Petitioner received an OI in FAP benefits in the amount of \$ [REDACTED] from March 1, 2016, through March 31, 2017, (OI period). [Exhibit B, pp. 68-72.]
6. On October 20 2017, the Department received Petitioner's request for hearing disputing the Notice of Overissuance.

### **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.

In this case, Petitioner requested a hearing to dispute the Department's actions with respect to the Notice of Overissuance. The Department issued the Notice of Overissuance after it was determined that Petitioner received an OI of FAP benefits from March 1, 2016, through March 31, 2017. When a client receives more benefits than he/she is entitled to receive, the Department must attempt to recoup the overissuance. BAM 700 (January 2017), p. 1. Although the Department was aware of the disqualifying information timely, the Department failed to utilize the information to determine Petitioner's continued eligibility for FAP benefits until October 2017. The Department became aware of Petitioner's spouse's two or more drug-related felony convictions, which permanently disqualified him for benefits, as early as December 2015. BEM 203 (January 2015), p. 2.

The Department acknowledges that its failure to consider Petitioner's spouse's permanent disqualification for benefits was Agency error. The Department had the

information or the ability to determine the correct amount of benefits to which Petitioner was eligible and failed to utilize the information to make that determination timely. An Agency error is caused by incorrect actions by the Department staff or Department processes. BAM 705 (January 2016), p. 1; BAM 105 (October 2016), p. 19.

Because the overissuance was due to Agency error, the Department is only allowed to seek recoupment/collection of an overissuance of benefits back 12 months before the date of correction. The overissuance period begins the first month (or first pay period for CDC) 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. BAM 705 (January 2016), p. 5. In this case, through its October 2017 Notice of Overissuance, the Department is seeking recoupment/collection of benefits issued from March 1, 2016, through March 31, 2017.

As evidence that Petitioner received benefits during the time period in question, the Department presented: (i) an issuance summary showing Petitioner received the benefits for a group size of two [Exhibit B, p. 40]; and (ii) FAP OI budgets showing once the disqualified person was removed from the budget there was an OI in benefits [Exhibit B, pp. 41-66]. After the budgets were corrected, it was determined that Petitioner was eligible for \$ [REDACTED] in FAP benefits during the OI period. Petitioner received an overissuance of \$ [REDACTED] in benefits during the time period in question. As such, the Department followed policy when it issued Petitioner the Notice of Overissuance.

### **DECISION AND ORDER**

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 an overissuance of benefits in the amount of \$ [REDACTED] and that the Department is entitled to recoup/collect \$ [REDACTED] for the overissuance.

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

DM/jaf



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**Denise McNulty**

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]

**DHHS Department Rep**

[REDACTED]

[REDACTED]

**Petitioner**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]