



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: May 4, 2018
MAHS Docket No.: 18-003393
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Eric J. Feldman

HEARING DECISION

Upon the request for a hearing by Petitioner, 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 three-way telephone hearing was held on May 1, 2018, from Lansing, Michigan. The Department of Health and Human Services (Department) was represented by [REDACTED], Recoupment Specialist. Petitioner was present for the hearing and represented herself.

ISSUE

Did Petitioner 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. Petitioner was a recipient of FAP benefits from the Department. [Exhibit A, pp. 15-18.]
2. On [REDACTED], Petitioner participated in a disqualification hearing in which Administrative Law Judge (ALJ) [REDACTED] determined that Petitioner had two drug-related felony convictions that made her ineligible for FAP benefits. [Exhibit A, pp. 8-12 (Reg. No. 16-017484).]

3. On [REDACTED], ALJ Ferris issued a hearing decision in which she found that Petitioner did not commit an intentional program violation (IPV); however, due to her having two drug-related felony convictions, she received an OI of FAP benefits in the amount of \$ [REDACTED] during the period of [REDACTED], to [REDACTED]. ALJ Ferris ordered the Department to initiate recoupment/collection procedures for the amount of \$ [REDACTED] [Exhibit A, pp. 8-12 (Reg. No. 16-017484).]
4. Subsequent to ALJ [REDACTED] decision, Petitioner should have been permanently disqualified from receiving FAP benefits due to her two drug-related felony convictions.
5. The Department failed to update Petitioner's profile in its system (Bridges) showing that she was ineligible for FAP benefits and mistakenly issued her benefits under a new case number during the period of [REDACTED] to [REDACTED]. [Exhibit A, pp. 1 and 15-18.]
6. On [REDACTED], the Department sent Petitioner a Notice of Overissuance (OI notice) informing her of a FAP OI for the period of [REDACTED], to [REDACTED] due to agency error. The OI notice also indicated that the OI balance was \$ [REDACTED] because the Department issued FAP benefits although she had multiple drug-related felonies. [Exhibit A, pp. 19-23.]
7. On April 2, 2018, Petitioner filed a hearing request, protesting the Department's action. [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), 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 they are entitled to receive, the Department must attempt to recoup the OI. BAM 700 (January 2018), p. 1. The amount of the OI is the benefit amount the group or provider actually received minus the amount the group was eligible to receive. BAM 705 (January 2016), p. 6.

An agency error is caused by incorrect actions (including delayed or no action) by the Michigan Department of Health and Human Services (MDHHS) staff or department processes. BAM 705, p. 1. Some examples are:

- Available information was not used or was used incorrectly.
- Policy was misapplied.
- Action by local or central office staff was delayed.
- Computer errors occurred.
- Information was not shared between department divisions such as services staff.
- Data exchange reports were not acted upon timely (Wage Match, New Hires, BENDEX, etc.).

BAM 705, p. 1. If unable to identify the type of overissuance, record it as an agency error. BAM 705, p. 1.

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 August 22, 1996. BEM 203 (October 2015), p. 2.

Here, the Department alleges that Petitioner received an OI for her FAP benefits (agency error) during the period of February 2017 to February 2018 because the Department issued FAP benefits although she had multiple drug-related felonies. [Exhibit A, pp. 19-23.]

On [REDACTED], Petitioner participated in a disqualification hearing in which ALJ [REDACTED] determined that Petitioner had two drug-related felony convictions that made her ineligible for FAP benefits. [Exhibit A, pp. 8-12 (Reg. No. 16-017484).]

On [REDACTED], ALJ Ferris issued a hearing decision in which she found that Petitioner did not commit an IPV; however, due to her having two drug-related felony convictions, she received an OI of FAP benefits in the amount of \$ [REDACTED] during the period of [REDACTED], to [REDACTED]. [Exhibit A, pp. 8-12 (Reg. No. 16-017484).] ALJ [REDACTED] ordered the Department to initiate recoupment/collection procedures for the amount of \$ [REDACTED]. [Exhibit A, pp. 8-12 (Reg. No. 16-017484).]

Subsequent to ALJ Ferris's decision, Petitioner should have been permanently disqualified from receiving FAP benefits due to her two drug-related felony convictions. However, the Department failed to update Petitioner's profile in its system (Bridges) showing that she was ineligible for FAP benefits and mistakenly issued her benefits under a new case number during the period of [REDACTED], to [REDACTED]. [Exhibit A, pp. 1 and 15-18.] As such, the Department sent Petitioner an OI notice informing her of the agency error and seeks to recoup the FAP benefits Petitioner was ineligible to receive due to her drug-related felony convictions. [Exhibit A, pp. 19-23.]

In response, Petitioner testified that she notified the Department multiple times that she should not be receiving FAP benefits and was informed that it would ok, but now, the Department is attempting to recoup the funds. Petitioner testified the Department eventually closed her FAP case. Petitioner testified she suffers from several medical diagnoses, including being a stroke patient. Petitioner also provided testimony concerning her previous hearing(s). Petitioner appeared to indicate that both of her drug-related felony convictions were the result of the same case.

Based on the foregoing information and evidence, the Department did establish a FAP benefit OI to Petitioner totaling \$ [REDACTED] for the period of [REDACTED], to [REDACTED], [REDACTED]. As stated above, ALJ [REDACTED] determined that Petitioner had two drug-related felony convictions that made her ineligible for FAP benefits. [Exhibit A, pp. 8-12 (Reg. No. 16-017484).] However, the evidence established that the Department, in error, failed to update Petitioner's profile showing that she was ineligible for FAP benefits and mistakenly issued her benefits under a new case number during the period of [REDACTED], to [REDACTED]. [Exhibit A, pp. 1 and 15-18.] Per policy, the Department is permitted to recoup these benefits Petitioner was ineligible to receive, even though the error was caused by the Department. See BAM 705, pp. 1-6. This error caused by the Department is known as "agency error." See BAM 705, pp. 1-6. As such, because Petitioner was ineligible to receive FAP benefits due to her drug-related felony convictions, the Department is entitled to recoup/collect \$ [REDACTED] for the period of [REDACTED] to [REDACTED]. BAM 700, p. 1; BAM 705, pp. 1-6; BEM 203, pp. 2 and 4.

It should be noted that Petitioner's OI amount included Administrative Recoupment and/or Automated Recoupment (AR) in its calculations. [Exhibit A, pp. 15-18; BAM 725 (October 2017), p. 1.] In regards to the OI calculation of FAP benefits, the amount of Electronic Benefit Transfer (EBT) benefits received in the calculation is the gross (before AR deductions) amount issued for the benefit month. BAM 705, p. 7. Thus, the Department properly included the gross amount of FAP benefits received before AR deductions in the OI calculation. See BAM 705, p. 7; BAM 725, p. 1.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department **did** establish a FAP benefit OI to Petitioner totaling \$ [REDACTED] for the period of [REDACTED], to [REDACTED].

Accordingly, the Department is **AFFIRMED**.

The Department is **ORDERED** to initiate collection procedures for a FAP benefit OI of \$ [REDACTED] in accordance with Department policy, less any amount already recouped and/or collected.

EF/hb



Eric J. Feldman

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]

Petitioner

[REDACTED]