



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

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[REDACTED] MI [REDACTED]

Date Mailed: January 9, 2019
MAHS Docket No.: 18-000872-RECON
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

ORDER GRANTING REQUEST FOR RECONSIDERATION
AND
DECISION AND ORDER OF RECONSIDERATION

This matter is before the undersigned Administrative Law Judge (ALJ) pursuant to the request for rehearing and/or reconsideration by the Michigan Department of Health and Human Services (MDHHS) of the Hearing Decision issued by the undersigned at the conclusion of the hearing conducted on September 26, 2018, and mailed on October 19, 2018, in the above-captioned matter.

The rehearing and reconsideration process is governed by the Michigan Administrative Code, Rule 792.11015, *et seq.*, and applicable policy provisions articulated in the Bridges Administrative Manual (BAM), specifically BAM 600, which provide that a rehearing or reconsideration must be filed in a timely manner consistent with the statutory requirements of the particular program that is the basis for the client's benefits application or services at issue and may be granted so long as the reasons for which the request is made comply with the policy and statutory requirements. MCL 24.287 also provides a statutory basis for a rehearing of an administrative hearing.

A rehearing is a full hearing which may be granted if either of the following applies:

- The original hearing record is inadequate for purposes of judicial review; or
- There is newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision. [BAM 600 (August 2018), p. 44.]

A reconsideration is a paper review of the facts, law or legal arguments and any newly discovered evidence that existed at the time of the hearing. It may be granted when the original hearing record is adequate for purposes of judicial review and a rehearing is not necessary, but one of the parties is able to demonstrate that the Administrative Law Judge failed to accurately address all the relevant issues raised in the hearing request. *Id.* Reconsiderations may be granted if requested for one of the following reasons:

- Misapplication of manual policy or law in the hearing decision, which led to the wrong decision;
- Typographical errors, mathematical error, or other obvious errors in the hearing decision that affect the substantial rights of the petitioner; or
- Failure of the Administrative Law Judge to address other relevant issues in the hearing decision. [*Id.*]

A request for reconsideration which presents the same issues previously ruled on, either expressly or by reasonable implication, shall not be granted. Mich Admin Code, R 792.10135.

MDHHS requested a hearing to establish an overissuance and intentional program violation (IPV). A hearing decision dated October 19, 2018, denied MDHHS' requests to establish an overissuance and IPV disqualification; additionally, MDHHS' hearing request was dismissed concerning the IPV due to withdrawal. The overissuance and IPV merit separate analyses for reconsideration.

In their request for reconsideration, MDHHS contended the denial of an IPV was erroneous. During the original hearing, MDHHS requested withdrawal of the IPV issue because Respondent submitted a signed documentation waiving the right to an administrative hearing. In the subsequent hearing decision, the request for IPV was properly dismissed due to MDHHS withdrawal. The order additionally denying IPV was not intended and merits reconsideration due to administrative error.

In their request for reconsideration, MDHHS additionally contended that denial of an overissuance was improper. MDHHS contended that an improper definition of trafficking was applied. MDHHS additionally contended that Respondent admitted to trafficking in signing documentation waiving her right to appear for the hearing. This matter was not addressed in the previous decision and also merits reconsideration.

The undersigned administratively erred in dismissing and denying MDHHS' request to establish an IPV. Additionally, MDHHS presented a relevant issue not addressed in the previous decision. Therefore, MDHHS' request for reconsideration is **GRANTED** concerning establishing an IPV and overissuance.

DECISION AND ORDER OF RECONSIDERATION

ISSUE

The issue is whether MDHHS established that Respondent received an overissuance (OI) of 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. On March 10, 2016, Respondent submitted an application to MDHHS requesting FAP benefits. (Exhibit A, pp. 15-36.)
2. From April 18, 2016, through February 16, 2017, Respondent was incarcerated. (Exhibit A, p. 10.) Respondent did not have an authorized hearing representative during this period. (Exhibit A, pp. 37 and 44.)
3. From April 20, 2016, through October 23, 2016, approximately \$[REDACTED] in FAP benefits were spent from Respondent's Electronic Benefit Transfer (EBT) card. (Exhibit A, pp. 39-40 and 45.)
4. Beginning March 2016, Respondent received \$[REDACTED] in FAP benefits. From April 2016 through June 2016, Respondent received ongoing FAP benefits of \$[REDACTED] month. All FAP benefits were based on a one-person FAP group. (Exhibit A, p. 13.)
5. On January 30, 2018, MDHHS requested a hearing to establish that Respondent received an OI of \$[REDACTED] in FAP benefits from April 2016 through October 2016 based on "unauthorized" FAP transactions. MDHHS also requested a hearing to impose a one-year IPV disqualification against Respondent. (Exhibit A, pp. 1-2.)
6. On an unspecified date, Respondent signed a Waiver of Disqualification Hearing and checked a box stating, "I admit to the facts as presented in the enclosed summary and understand that I will be disqualified from the programs shown without a hearing."
7. On September 26, 2018, an administrative hearing was held.
8. During the hearing, MDHHS withdrew their request to establish an intentional program violation.
9. On October 19, 2018, the undersigned issued a Hearing Decision finding that MDHHS failed to establish that Respondent received an overissuance of FAP benefits.

10. On November 14, 2018, MAHS received MDHHS' request for reconsideration of the administrative order denying MDHHS' request to establish an overissuance.

CONCLUSIONS OF LAW

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. MDHHS (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. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

In an Intentional Program Violation Repayment Agreement (Exhibit A, pp. 5-6) sent to Respondent as part of MDHHS' prehearing procedures, MDHHS alleged that Respondent trafficked \$[REDACTED] in FAP benefits. MDHHS requested a hearing to establish a related recipient claim and IPV disqualification period.

During the hearing, MDHHS withdrew their request to establish an IPV disqualification based on Respondent's signing of a Request for Waiver of a Disqualification Hearing. MDHHS' request to establish an IPV disqualification against Respondent will be dismissed. The only remaining issue is establishment of a recipient claim.

When a client group receives more benefits than it is entitled to receive, MDHHS must attempt to recoup the overissuance. BAM 700 (January 2016), pp. 1-2. An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to receive. *Id.* Recoupment is an MDHHS action to identify and recover a benefit overissuance. *Id.* Federal regulations refer to FAP overissuances as "recipient claims" and mandate states to collect them. 7 CFR 273.18(a).¹

An OI is also the amount of benefits trafficked (stolen, traded, bought or sold) or attempted to be trafficked. *Id.*, pp. 2-3. Trafficking means the buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone. 7 CFR 271.2.

The evidence established that \$[REDACTED] in FAP benefits were spent from Respondent's Bridge Card during a period that Respondent was incarcerated. Such evidence, by itself, does not establish cash or consideration in exchange for use of such benefits. MDHHS presented additional evidence of trafficking by Respondent.

¹ Federal regulations apply to SNAP (Supplemental Nutrition Assistance Program). The Food Assistance Program is the Michigan equivalent of SNAP and is subject to SNAP regulations.

In their request for reconsideration, MDHHS alleged that Respondent signed the Request for Waiver of Disqualification Hearing (DHS-826) and checked a box admitting to the allegations from the MDHHS summary. MDHHS did not present the DHS-826 as an exhibit, though the allegation was unrebutted. Based on the evidence, it will be found that Respondent admitted to the MDHHS allegations.

MDHHS presented a Hearing Summary (Exhibit A, p. 1) alleging that Respondent trafficked \$[REDACTED] in FAP benefits as evidenced by use of her Bridge Card during incarceration from April 18, 2016, through February 16, 2017. As Respondent did not appear for the hearing to refute or clarify her statements, Respondent's statement will be accepted as fact. Further, MDHHS provided Respondent's FAP-expenditure history which listed \$[REDACTED] in transactions occurring from April 20, 2016, through October 23, 2016 - a period when Respondent was incarcerated. The evidence sufficiently established trafficking by Respondent.

Based on the evidence, it is found that Respondent trafficked all FAP benefits spent from her Bridge Card while she was incarcerated. Thus, MDHHS established a recipient claim of \$[REDACTED] in FAP benefits against Respondent.

DECISION AND ORDER

Concerning the IPV disqualification, the administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS withdrew their request to establish an IPV disqualification against Respondent. It is further found that the Hearing Decision dated October 19, 2018, improperly denied the request to establish an IPV disqualification due to administrative error. The MDHHS request to establish an IPV disqualification is **DISMISSED**, and the hearing decision dated October 19, 2018, denying the IPV disqualification is **REVERSED**.

Concerning the recipient claim, the administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established a recipient claim of \$[REDACTED] in FAP benefits against Respondent. The MDHHS request to establish a recipient claim against Respondent is **GRANTED**, and the hearing decision dated October 19, 2018, denying the recipient claim is **REVERSED**.

CG/



Christian Gardocki

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).

DHHS

Lindsay Miller
MDHHS-Genesee-UnionSt-Hearings

Petitioner

MDHHS-OIG-Hearings

Respondent

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

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Policy Recoupment