



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

SHELLY EDGERTON  
DIRECTOR

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

Date Mailed: September 11, 2018  
MAHS Docket No.: 18-007852  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Kevin Scully

**HEARING DECISION**

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a telephone hearing was held on September 5, 2018, from Lansing, Michigan. Petitioner represented himself, and his wife, [REDACTED], testified on his behalf. The Department of Health and Human Services was represented by Vicki DeKruiger, Recoupment Specialist.

**ISSUE**

Did the Department of Health and Human Services (Department) properly determine that Petitioner received an overissuance of Food Assistance Program (FAP) benefits that must be recouped?

**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 2, 2015, the Department received Petitioner's completed Redetermination (DHS-1010) where he reported to the Department that no one in his benefit group had been convicted of any felonies involving controlled substances. Exhibit A, pp 7-12.
2. Petitioner acknowledged under penalties of perjury that his March 2, 2015, redetermination form was examined by or read to him, and, to the best of his knowledge, contained facts that were true and complete. Exhibit A, p 12.

3. On March 13, 2015, the Department notified Petitioner that he was approved for Food Assistance Program (FAP) benefits as a group of one and that his wife was disqualified due to a living arrangement in an institution. Exhibit A, pp 13-18.
4. On July 12, 2016, the Department notified Petitioner that he was approved for Food Assistance Program (FAP) benefits as a group of two, including his wife. Exhibit A, p 26.
5. On March 8, 2017, the Department received Petitioner's Redetermination (DHS-1010) where he disclosed that his wife had been convicted more than once of a felony involving controlled substances. Exhibit A, pp 30-37.
6. On March 20, 2017, the Department notified Petitioner that he was approved for Food Assistance Program (FAP) benefits as a group of two including his wife. Exhibit A, pp 38-43.
7. On February 26, 2018, the Department received Petitioner's Redetermination (DHS-1010) where he disclosed that this wife had been convicted more than once of a felony involving controlled substances. Exhibit A, pp 44-51.
8. On March 13, 2018, the Department notified Petitioner that he was approved for Food Assistance Program (FAP) benefits as a group of two including his wife. Exhibit A, pp 52-57.
9. On May 10, 2018, the Department completed a Front End Eligibility (FEE) investigation and determined that Petitioner's wife is not eligible for Food Assistance Program (FAP) benefits. Exhibit A, p 58.
10. On May 11, 2018, the Department issued an Overissuance Referral (DHS-4701) to determine if Petitioner had received an overissuance of Food Assistance Program (FAP) benefits. Exhibit A, p 59.
11. In 2015, Petitioner's wife pled guilty four separate felony offenses involving controlled substances where the conduct occurred after August 22, 1996. Exhibit A, pp 27-29.
12. From August 1, 2016, through May 31, 2018, Petitioner received Food Assistance Program (FAP) benefits totaling \$6,497.
13. If Petitioner's wife had been properly disqualified from the Food Assistance Program (FAP), he would have been eligible for \$2,935 of FAP benefits from August 1, 2016, through May 31, 2018. Exhibit A, pp 62-107.
14. On July 20, 2018, the Department sent Petitioner a Notice of Overissuance (DHS-4358-A) instructing him that a Food Assistance Program (FAP) overissuance of \$3,562 would be recouped in accordance with policy. Exhibit A, pp 108-113.

15. On August 3, 2018, the Department received Petitioner's request for a hearing protesting the recoupment of Food Assistance Program (FAP) benefits. Exhibit A, pp 5-6.

### **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.

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 convictions were for conduct which occurred after August 22, 1996. Department of Health and Human Services Bridges Eligibility Manual (BEM) 203 (May 1, 2018), p 4.

Subject to federal approval, an individual is not entitled to the exemption in this section if the individual was convicted in 2 or more separate cases of a felony that included the possession, use, or distribution of a controlled substance after August 22, 1996. 2017 PA 107 §619.

An individual convicted (under Federal or State law) of any offense which is classified as a felony by the law of the jurisdiction involved and which has as an element the possession, use, or distribution of a controlled substance (as defined in section 102(6) of the Controlled Substance Act, 21 U.S.C.802(6)) shall not be considered an eligible household member unless the State legislature of the State where the individual is domiciled has enacted legislation exempting individuals domiciled in the State from the above exclusion. 7 CFR 173.11(m).

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. Department of Human Services Bridges Administrative Manual (BAM) 700 (January 1, 2018), p 1.

Petitioner received FAP benefits totaling \$6,497 from August 1, 2016, through May 31, 2018, as part of a benefit group containing his wife. Petitioner's wife should have been permanently disqualified from FAP based on her history of two or more felony convictions were each offense occurred after August 22, 1996. The Department is not claiming that Petitioner attempted to conceal his wife's felony convictions and does not

dispute that she was approved for FAP benefits based on the Department's failure to take action based on all of the available information.

However, Petitioner did receive FAP benefits that he was not eligible for and the Department is required to recoup those benefits.

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. The Department 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. Department of Health and Human Services Bridges Administrative Manual (BAM) 725 (October 1, 2017), p 1.

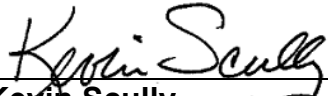
As the benefit grantee, and an adult member of the benefit group that acknowledged the duties and responsibilities of accepting FAP benefits, Petitioner is responsible for the overissuance even though the evidence supports a finding that he was not at fault.

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 a \$3,562 overissuance of Food Assistance Program (FAP) benefits that must be recouped.

### **DECISION AND ORDER**

Accordingly, the Department's decision is AFFIRMED.

KS/hb

  
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**Kevin Scully**  
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) 763-0155; 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**

Lori Teal  
201 Commerce Dr  
Ithaca, MI 48847

**DHHS Department Rep.**

MDHHS-Recoupment  
235 S Grand Ave  
Suite 1011  
Lansing, MI 48909

Gratiot County, DHHS

BSC2 via electronic mail

M. Holden via electronic mail

D. Sweeney via electronic mail

**Petitioner**

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