



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

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

Date Mailed: November 20, 2018
MAHS Docket No.: 18-010753
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 November 14, 2018, from Lansing, Michigan. Petitioner was represented by herself. The Department of Health and Human Services was represented by Minnie Egbunu.

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 15, 2013, Petitioner was diagnosed with a cerebral aneurysm without rupture. Exhibit A, p 11.
2. In 2007, Petitioner, using the alias [REDACTED] [REDACTED] [REDACTED] pled guilty to Delivery/Manufacture of a Controlled Substance Less Than 50 Grams. Exhibit A, pp 15-16.
3. In 2010, Petitioner, using the alias [REDACTED], pled nolo contendere to Possession of a Controlled Substance Less Than 25 Grams. Exhibit A, pp 17-18.
4. Petitioner has multiple aliases including [REDACTED] and [REDACTED] [REDACTED] Exhibit A, pp 19-31.

5. On [REDACTED] [REDACTED] 2015, the Department received Petitioner's application for Food Assistance Program (FAP) benefits where she denied having been convicted of any felonies involving controlled substances. Exhibit A, pp 32-62.
6. On [REDACTED] [REDACTED] 2017, the Department received Petitioner's application for Food Assistance Program (FAP) benefits where she denied having been convicted of any felonies involving controlled substances. Exhibit A, pp 63-93.
7. Petitioner reported to the Department on both of her applications for assistance that she is disabled. Exhibit A, pp 32-93.
8. Petitioner's applications for assistance were filled out by her daughter.
9. Respondent does have an apparent physical or mental impairment that would limit the understanding or ability to fulfill the duties and responsibilities of the Food Assistance Program (FAP).
10. Petitioner received Food Assistance Program (FAP) benefits from September 1, 2015, through January 31, 2016, and April 1, 2017, through September 30, 2017. Exhibit A, pp 9-10.
11. On August 21, 2018, the Department sent Petitioner a Notice of Overissuance (DHS-4358-A) instructing her that she had received a \$ [REDACTED] overissuance of Food Assistance Program (FAP) benefits. Exhibit A, pp 4-8.
12. On [REDACTED] [REDACTED] [REDACTED] the Department received Petitioner's request for a hearing protesting the recoupment of Food Assistance Program (FAP) benefits. Exhibit A, pp 2-3.

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), 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.

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.

On August 7, 2015, and April 13, 2017, the Department received Petitioner's applications for FAP benefits. The Department does not dispute that Petitioner's daughter completed the application forms. The Department also did not dispute that Petitioner has an apparent physical or mental impairment that would limit her understanding or ability to fulfill the duties and responsibilities of receiving FAP benefits.

Petitioner was approved for FAP benefits based on the application forms that indicated that she had not been convicted of any felonies involving controlled substances. Petitioner was convicted of two or more felonies involving controlled substances that were not reported to the Department on her application forms. As a result of Respondent's failure to report her history of felony convictions involving controlled substances, she was approved for FAP benefits when she should be permanently disqualified from FAP.

The Department offered substantial evidence to establish that Petitioner received FAP benefits she was not eligible for because she had been convicted of two or more felonies involving controlled substances. Petitioner was not eligible for any of the FAP benefits she received. Therefore, she received a \$ [REDACTED] overissuance of FAP benefits. The Department did not dispute that the failure to accurately report her felony convictions was the result of a mistake and that there was no intent to conceal her circumstances from the Department. The Department is required to recoup an overissuance of FAP benefits by BAM 700.

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 Food Assistance Program (FAP) benefits that must be recouped.

DECISION AND ORDER

Accordingly, the Department's decision is AFFIRMED.

KS/hb



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 Department Rep.

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

DHHS

Richard Latimore
4733 Conner
Detroit, MI 48215

Wayne County (District 57), DHHS

BSC4 via electronic mail

M. Holden via electronic mail

D. Sweeney via electronic mail

Petitioner

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