



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: December 21, 2018
MAHS Docket No.: 18-011902
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Landis Lain

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; 42 CFR 438.400 to 438.424; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on December 18, 2018, from Lansing, Michigan. Petitioner was represented by [REDACTED] [REDACTED] Petitioner. The Department of Health and Human Services (Department or Respondent) was represented by Annette Fullerton, Recoupment Specialist.

Respondent's Exhibit A pages 1-28 were admitted as evidence.

ISSUE

Did the Department properly determine that Petitioner received an Overissuance of Food Assistance Program (FAP) benefits which 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 [REDACTED] [REDACTED] 2011, Petitioner was convicted of Controlled Substance Possession Methamphetamine (MCL 333.7403B1)
2. On [REDACTED] [REDACTED] 2012, Petitioner was convicted of Controlled Substance – Operating or Maintaining a Laboratory (MCL 333.7401C2A)
3. Petitioner applied for Food Assistance Program benefits sometime in 2014.

4. Petitioner marked 'yes' on his application that he did have more than one drug felony conviction.
5. The Department opened the FAP case in error because Petitioner had two drug felony convictions.
6. Petitioner was a Food Assistance Program benefit recipient from August 2014 through July 2015.
7. On July 6, 2015, the caseworker determined that the FAP case was opened in error and the FAP case was closed.
8. On October 19, 2018, the recoupment specialist received the MIGS 1835 OIG packet.
9. An OIG investigation was concluded and not pursued as there was insufficient evidence, due to lack of application documents to prove that Petitioner failed to report drug related felony convictions and was not FAP eligible.
10. On October 23, 2018, the Department sent Petitioner Notice of Over-issuance stating: you received more benefits that you were eligible to receive during the period of August 1, 2014 to July 31, 2015. The total over-issuance is \$ [REDACTED]. The reason for the overissuance is: Agency Error. Explanation of reason: You were approved for FAP in error. Drug felonies make you ineligible per BEM 203 and BAM 705.
11. Petitioner was issued \$ [REDACTED] in FAP benefits by the State of Michigan, and the Department determined that Petitioner was entitled to \$0 in such benefits during this time period.
12. On November 7, 2018, the Department received a request for hearing to contest the negative action.
13. On November 27, 2018, the Michigan Administrative Hearing System received the copy of the hearing summary and attached documents.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a Department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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.

Pertinent Department policy dictates:

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the over issuance. BAM 700, p 1 (1/1/2016).

Recoupment is a MDHHS action to identify and recover a benefit over issuance. A recoupment specialist (RS) is the specialist assigned to process over issuances and act as liaison with OIG, reconciliation and recoupment section (RRS), and other personnel involved with recoupment and collections. BAM 700 page 2

An agency error is caused by incorrect action (including delayed or no action) by MDHHS staff or Department processes. 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.).

If unable to identify the type, record it as an agency error. FIP, SDA, CDC and FAP Agency errors are not pursued if the estimated amount is less than \$250 per program. BEM 700, page 5

A client error occurs when the client received more benefits than they were entitled to because the client gave incorrect or incomplete information to the Department. A client error also exists when the client's timely request for a hearing result in deletion of a MDHHS action, and any of the following occurred:

- The hearing request is later withdrawn.
- MAHS denies the hearing request.

- The client or administrative hearing representative fails to appear for the hearing and MAHS gives MDHHS written instructions to proceed.
- The hearing decision upholds the Department's actions; see BAM 600. BAM 700 page 7

When a potential over issuance is discovered the following actions must be taken:

1. Immediately correct the current benefits; see BAM 220, Case Actions, for change processing requirements.
2. Obtain initial evidence that an over issuance potentially exists.
3. Determine if it was caused by Department, provider or client actions.
4. Refer any over issuances needing referral to the RS within 60 days of suspecting one exists.

Exception: Office of Quality Assurance (OQA) discovered over issuances must be referred to the RS within 7 days of receipt of the OQA findings. OQA has already verified one exists. FIP, SDA, CDC and FAP Within 60 days of suspecting an over issuance exists, complete a DHS-4701, Over issuance Referral, and refer the following over issuances to the RS for your office:

- All client and agency errors over \$250.
- All suspected IPV errors.
- All CDC provider errors BAM 700 page 10

In this case, Petitioner did receive notice that the Department committed an error when opened FAP benefits from August 2014 through July 2015.

Petitioner testified that he admitted on his application that he had drug felony convictions. Petitioner testified that he would not have taken the food assistance if he had known that he was not eligible because of his drug convictions. He does not make much money and it is unfair to make him pay back the money. Petitioner's argument is a compelling equitable argument to be excluded from Department policy. This Administrative Law Judge has no equity powers and cannot make a decision that is in contravention of Department policy.

Equity powers are not within the scope of authority delegated to this Administrative Law Judge pursuant to a written directive signed by the Department of Health and Human Services Director, which states:

Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations or overrule or make

exceptions to the Department policy set out in the program manuals.

Furthermore, administrative adjudication is an exercise of executive power rather than judicial power and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940).

Evidence on the record indicates Petitioner received an overissuance of Food Assistance Program benefits in the amount of \$[REDACTED] based upon the fact that Petitioner has two felony drug convictions. The Department is required to recoup overissued benefits.


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 finds that the Department has established by the necessary competent, material and substantial evidence on the record that it acted in accordance with Department policy when it determined that Petitioner has been overissued FAP benefits in the amount of \$[REDACTED] based upon Department error, which must be recouped. Even though the error was made by the agency, the Department is compelled by Department policy to recoup any benefits in excess of the amount of \$250. The Department has established its case by a preponderance of the evidence.

DECISION AND ORDER

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

The Department is **ORDERED** to initiate the Recoupment procedures for the amount of \$[REDACTED] in accordance with Department policy within ten days of receipt of this Decision and Order.

LL/hb



Landis Lain
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

Mariah Schaefer
3255 122nd Ave Ste 300
Allegan, MI 49010

DHHS Department Rep.

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

Allegan County, DHHS

BSC3 via electronic mail

M. Holden via electronic mail

D. Sweeney via electronic mail

Petitioner

[REDACTED]