



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: May 1, 2019
MOAHR Docket No.: 19-002965
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jacquelyn A. McClinton

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 April 22, 2019, from Detroit, Michigan. Petitioner represented herself. The Department of Health and Human Services (Department) was represented by [REDACTED], Recoupment Specialist.

ISSUE

Did the Department properly determine that Petitioner was overissued Food Assistance Program (FAP) benefits in the amount of \$ [REDACTED] from January 1, 2015 through July 31, 2018 due to client error?

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 January 1, 2015 through July 31, 2018.
2. On December 5, 2014, Petitioner submitted a Redetermination to the Department in which she failed to answer whether she had ever been convicted of a drug related felony.
3. On July 27, 2017, Petitioner submitted a Redetermination to the Department in which she indicated that she had been convicted of a drug related felony but further indicated that she had not been convicted more than once.

4. On January 24, 2019, Petitioner's assigned case worker received a request from the Office of Inspector General to complete an overissuance budget as it had been discovered that Petitioner had previously been convicted of two drug related felonies.
5. On March 4, 2019, the Department sent Petitioner a Notice of Overissuance which notified Petitioner that she had been overissued FAP benefits in the amount of \$ [REDACTED] from January 1, 2015 through July 31, 2018.
6. On March 14, 2019, Petitioner filed a Request for Hearing disputing the Department's actions.

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.

The amount of the OI is the benefit amount the client actually received minus the amount the client was eligible to receive. BAM 715 (July 2014), p. 6. When a client group receives more benefits than it is entitled to receive, DHS must attempt to recoup the overissuance (OI). BAM 700 (May 2014), p. 1. Additionally, Effective October 1, 2011, an individual convicted of a felony for the use, possession, or distribution of controlled substances will be permanently disqualified from receipt of FAP benefits if the terms of probation or parole are violated and the qualifying conviction occurred after August 22, 1996. In addition, 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 (January 2015), p. 2.

The offense must be classified as a felony by the law of the State and have as an element the possession, use or distribution of a controlled substance. The term "distribute" means to deliver (other than administering or dispensing) a controlled substance or a listed chemical. The term "deliver" or "delivery" means the actual, constructive, or attempted transfer of a controlled substance or a listed chemical, whether or not there is an agency relationship. 21 USC section 862a(a)(1) and (2); 21

USC 802(8) and (11). The disqualification does not apply if the conviction is for conduct occurring on or before August 22, 1996. 21 USC 862a(d)(2).

In this case, the Department testified that Petitioner was convicted of her first drug related felony in 2005 and her second drug related felony in 2007. Petitioner does not dispute the convictions. The Department presented a Redetermination submitted by Petitioner on December 5, 2014. In the Redetermination, Petitioner was asked if she had been convicted of a drug related felon and if so, had she been convicted more than once. Petitioner failed to answer either question. The Department also presented a Redetermination submitted by Petitioner on July 27, 2017 in which Petitioner acknowledged that she had been convicted of a drug related felony but stated that she had not been convicted more than once.

Petitioner testified that she left the questions blank on the December 5, 2014 Redetermination because she wanted an opportunity to explain her circumstances to her assigned worker. Petitioner testified that she informed her case worker that she had been convicted of two drug related felonies and the circumstances surrounding the convictions. Petitioner stated that after the disclosure, her case worker approved her for the receipt of FAP benefits. Regarding the July 27, 2017 Redetermination, Petitioner testified that she misread the questions. Petitioner indicated that she believed that the question was asking if she had been convicted of a drug related felony more than twice despite the specificity of the question.

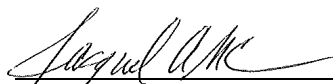
The Department provided evidence to show that during the period of January 1, 2015 through July 31, 2018, Petitioner received FAP benefits in the total amount of \$ [REDACTED]. It is found that Petitioner's failure to answer relevant questions and/or her failure to correctly answer the questions directly led to the receipt of FAP benefits for which she was not entitled. As such, the Department has established that Petitioner was over issued benefits in the amount of \$ [REDACTED] during the overissuance period.

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 was overissued FAP benefits in the amount of \$ [REDACTED] from January 1, 2015 through July 31, 2018.

DECISION AND ORDER

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

JAM/tif



Jacquelyn A. McClinton
Administrative Law Judge
for Robert Gordon, 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 Office Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

Via Email:

[REDACTED]

Petitioner – Via First-Class Mail:

[REDACTED]