



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED] MI [REDACTED]

Date Mailed: August 13, 2019
MOAHR Docket No.: 19-007143
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 August 8, 2019, from Lansing, Michigan. The Petitioner was represented by Petitioner, [REDACTED]. The Department of Health and Human Services (Department or Respondent) was represented by Annette Fullerton, Recoupment Specialist.

Respondent's Exhibit A pages 1-24 were admitted as evidence.

ISSUE

Did the Department properly determine that Petitioner was over-issued 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. Petitioner was a Food Assistance Program benefit recipient.
2. On [REDACTED] [REDACTED] 2015, Petitioner filed an application for FAP benefits.
3. Petitioner indicated on his application that he had more than one drug related felony criminal convictions.

4. The Department failed to properly review the application and granted Petitioner eligibility for FAP benefits from February 2016- through January 31, 2017, resulting in an over issuance of benefits in the amount of \$2,328.
5. On June 14, 2019, the Department sent Petitioner a Notice of Overissuance in the amount of \$2,328 for the Food Assistance Program as a result of agency error.
6. On July 2, 2019, the Department received a request for hearing to contest the Department's negative action.
7. On July 8, 2019, a pre-hearing telephone conference was held with Petitioner.
8. On July 16, 2019, the Michigan Administrative Hearing System received a hearing summary and attached documents.
9. On August 8, 2019, the hearing was held.

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

Criminal Justice Disqualifications

People convicted of certain crimes and probation or parole violators are not eligible for assistance. BEM 203, p 1 (10/1/2015). 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, p 4.

In this case, evidence on the record indicates the Petitioner did notify the Department in his November 25, 2015, application that he had been convicted of more than one drug related felony. The Department failed to properly review the application and granted Petitioner FAP eligibility from February 29, 2016-January 31, 2017 as a result of agency error.


Petitioner has the following convictions: August 6, 2001 – MCL 333.74032A5, Controlled Substance Possession, Narcotic or Cocaine less than 50 grams (CFN- 01-04565-FH); and a September 27, 2005, conviction for Cannabis Trafficking, Class 1 Felony (CFN-2005CF195).

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 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 \$2,328 based upon Department error, which must be recouped. Even if 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 process in accordance with Department policy within ten days of receipt of this Decision and Order.

LL/hb



Landis Lain
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 of 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

DHHS

Jackie Stempel
2700 Baker Street
PO Box 4290
Muskegon Heights, MI 49444

Muskegon County, DHHS

BSC3 via electronic mail

M. Holden via electronic mail

D. Sweeney via electronic mail

DHHS Department Rep.

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

Petitioner

[REDACTED], MI [REDACTED]