



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: March 6, 2020
MOAHR Docket No.: 20-000693
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: John Markey

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 March 4, 2020 from Detroit, Michigan. Petitioner appeared at the hearing alongside his sister, [REDACTED], who also served as a witness. The Department of Health and Human Services (Department) was represented by Tracy Upshaw, Recoupment Specialist, and Darrell Rich, Assistance Payments Supervisor. During the hearing, a 48-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-48.

ISSUE

Did the Department establish that Petitioner received a \$6,606 overissuance of Food Assistance Program (FAP) benefits from January 1, 2015 through December 31, 2019 that the Department is entitled to recoup and/or collect?

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], 2003, Petitioner was charged in Macomb County with three criminal offenses, two of which were drug-related felony offenses. Exhibit A, pp. 27-28.
2. On [REDACTED], 2003, Petitioner entered a plea of guilty and was sentenced regarding at least one of the charges. Notably, the documentation provided does not indicate which of the three charges Petitioner plead guilty to and was convicted of. Exhibit A, pp. 27-29.

3. In [REDACTED] 2009, Petitioner was charged in [REDACTED] County with at least two criminal offenses, one of which was a drug-related felony offense. Exhibit A, pp. 30-31.
4. On [REDACTED] 2009, Petitioner entered a plea of guilty and was sentenced regarding at least one of the charges. The documentation suggests that Petitioner plead guilty to the drug-related felony charge, but it is not clear. In any event, the document does not indicate what provision of law Petitioner was convicted of violating. Exhibit A, pp. 30-31.
5. On [REDACTED] 2014, Petitioner submitted to the Department an application for benefits, including FAP benefits. Exhibit A, pp. 32-47.
6. On the application, Petitioner was asked whether he had been convicted of a drug-related felony that occurred after August 22, 1996. Petitioner indicated that he had not been. Exhibit A, p. 36.
7. Petitioner signed the application, certifying under penalty of perjury the truth of the information provided. Exhibit A, p. 45.
8. Petitioner's application was approved. Petitioner received FAP benefits from [REDACTED] 2015 through [REDACTED] 2019. Exhibit A, pp. 16-26.
9. At some point, the Department established the belief that Petitioner had been convicted at least twice of drug-related felonies for conduct that occurred after August 22, 1996. Per Department policy, an individual with two or more such convictions is disqualified from receiving FAP benefits.
10. On [REDACTED], 2019, a Department worker completed an Overissuance Referral, Form 4701, thereby referring the matter to a Recoupment Specialist for investigation. Exhibit A, p. 48.
11. On [REDACTED] 2020, the Department issued to Petitioner a Notice of Overissuance informing Petitioner that the Department determined Petitioner received a [REDACTED] client error overissuance of FAP benefits from [REDACTED], 2015 through [REDACTED], 2019. Exhibit A, pp. 6-14.

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.

In this case, the Department is seeking to establish a \$ [REDACTED] client error overissuance of FAP benefits issued to Petitioner from [REDACTED], 2015 through [REDACTED] 2019. The Department contends that Petitioner was not eligible to receive any of the FAP benefits he received during that time period. The basis for that contention is the Department's belief that Petitioner had been convicted of drug-related felonies two or more times for conduct that occurred after August 22, 1996.

When an ineligible client is issued benefits or an eligible client is issued more benefits than the client is entitled, the Department must attempt to recoup the overissuance. BAM 700 (October 2018), p. 1; 7 CFR 273.18. 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. BEM 203 (May 2018), p. 4; 7 CFR 273.11(m).

The Department is correct that an individual convicted of two or more drug-related felonies for conduct that occurred after August 22, 1996 is permanently disqualified from receiving FAP benefits. The Department was also able to establish that Petitioner received [REDACTED] in FAP benefits from [REDACTED], 2015 through [REDACTED], 2019. Thus, if the Department could show that Petitioner had been convicted of two or more drug-related felonies for conduct occurring after August 22, 1996, the Department would prevail, and Petitioner would be on the hook for repaying all [REDACTED] back to the Department.

However, the Department failed to present sufficient competent evidence to establish that Petitioner, in fact, did have two felony-drug convictions for conduct that occurred after August 22, 1996. In an effort to establish that Petitioner had two such convictions, the Department presented documentation with respect to both the 2003 and 2009 incidents and was given an opportunity to question Petitioner. The documentation provided was woefully insufficient to establish the facts asserted, and the Department declined to exercise its right to question Petitioner regarding his criminal history.

Instead of providing an actual court document signed by a judge proving the existence of a conviction, the Department presented docket sheets from a website that appears to be operated by Macomb County. The documentation regarding the 2003 incident has numerous missing pieces of information and fails to indicate the criminal offense underlying the conviction. While Petitioner had been charged with three criminal offenses, two of which were drug-related felonies, the documentation provided does not indicate which of the three charged criminal offenses Petitioner plead guilty to and was convicted of. Thus, with respect to the 2003 incident, the Department only presented evidence that Petitioner was charged of a relevant offense. A charge is much different

than a conviction, and the only thing that matters in this case is whether Petitioner was convicted of a relevant offense. Based on the evidence presented, the Department did not prove that Petitioner was convicted of a drug-related felony with respect to the 2003 incident. The documentation regarding the 2009 incident is slightly more complete than the documentation regarding the 2003 offense. It appears as though the conviction was probably for the drug-related felony offense. However, given the incomplete nature of the documentation, the lack of clarity regarding the entries thereon, and the Department's inability to testify with any certainty as to when any actual convictions allegedly occurred, the documentation provided does not convince the undersigned Administrative Law Judge that Petitioner was convicted of a drug-related offense in 2009.

The Department's position in this matter was that Petitioner was disqualified from receipt of FAP benefits during the entire time period from [REDACTED], 2015 through [REDACTED], 2019 as a result of his alleged drug-related felony convictions that occurred in 2003 and 2009. During the hearing, the Department was unable to prove that Petitioner had two drug-related felonies. Thus, per the evidence presented in this case, Petitioner was not disqualified from receiving those benefits. As the Department failed to establish that Petitioner should not have received the benefits issued, the Department did not establish an overissuance of FAP 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 did not establish that Petitioner received an overissuance of FAP benefits from [REDACTED], 2015 through [REDACTED] 2019.

DECISION AND ORDER

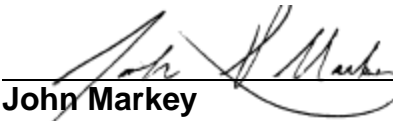
Accordingly, the Department's decision is **REVERSED**.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Delete from Petitioner's case the alleged overissuance of FAP benefits Petitioner received from [REDACTED] 2015 through [REDACTED] 2019.

IT IS FURTHER ORDERED that the Department is prohibited from any further attempts to establish an overissuance with respect to FAP benefits issued to Petitioner from [REDACTED], 2015 through [REDACTED], 2019.

JM/tm



John Markey
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

Chelsea McCune
27690 Van Dyke
Warren, MI
48093

DHHS Department Rep.

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

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

cc: FAP: M. Holden; D. Sweeney
Macomb County AP Specialist (4)