



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]

Date Mailed: October 21, 2019
MOAHR Docket No.: 19-009917
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

HEARING DECISION

Upon the request for a hearing by the Department of Health and Human Services (Department), this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, and in accordance with Titles 7, 42 and 45 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16, 42 CFR 431.230(b), and 45 CFR 235.110, and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a telephone hearing was held on October 9, 2019, from Lansing, Michigan. The Department was represented by LaToi Patillo, Recoupment Specialist. The Petitioner was represented by himself. Department Exhibit 1, pp. 1-82 was received and admitted. Petitioner Exhibit 1, pp. 1-13 was received and admitted.

ISSUE

Did Petitioner receive an over-issuance (OI) of Food Assistance Program (FAP) benefits 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. On March 15, 2017, the Department requested hearing to establish an Intentional Program Violation because Petitioner had 2 felony drug convictions and recoupment of FAP benefits in the amount of \$3,341.
2. On July 6, 2017, a Decision was entered affirming the IPV and Petitioner was ordered to pay \$3,341.
3. On September 4, 2019, Petitioner requested a hearing disputing the overissuance determination.

- Petitioner had repaid \$1,356.12 towards the overissuance at the time he requested hearing.

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), and Department of Health and Human Services Reference Tables Manual (RFT).

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 to .3015.

OVERISSUANCE AMOUNT FIP, SDA, CDC and FAP

The amount of the overissuance is the benefit amount the group actually received minus the amount the group was eligible to receive. BAM 705

Additionally, Petitioner testified that he never applied for FAP benefits because he was aware he was not eligible due to his previous felony drug convictions. Petitioner testified that he believed his identity was stolen and someone else applied for and received benefits under this name. Petitioner testified that he never lived at the 3958 W M-72 Hwy., Grayling, MI 49738 address where the IPV decision was sent.

Petitioner was active for MA and FAP during the fraud period and had regular contact with the Department according to the Case Comments. The information regarding his medical expenses and housing expenses were verified. It is unlikely that if Petitioner's identity was stolen that the individual who stole his identity would be able to verify medical and housing expenses. Petitioner submitted records from Consumer's Energy and records showing he was incarcerated after the fraud period. Petitioner failed to present sufficient evidence to establish that his identity was stolen. Petitioner presented no proof that he made a report to law enforcement regarding his identity being stolen. Petitioner's testimony that his identity was stolen was not credible. Petitioner knew of should have known that the Department was collecting money towards the overissuance for a significant period of time and he failed to take action. Petitioner failed to request a hearing within 90 days of the Department action and his request for hearing could have been dismissed on that basis. BAM 600 Petitioner also failed to appeal the July 6, 2017, Decision and Order in a timely manner and his request could have been dismissed on that basis.

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department **did** establish a FAP benefit OI remaining balance owed to Respondent totaling \$1,984.88. 7 CFR 273.6

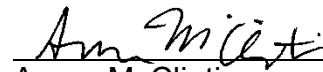
In addition, Petitioner's request for hearing was not filed within 90 days of the Notice of Overissuance and could have been dismissed for being untimely. BAM 600

DECISION AND ORDER

Accordingly, the Department is AFFIRMED.

The Department is ORDERED to initiate collection procedures for a \$1,984.88 OI in accordance with Department policy.

AM/nr



Aaron McClintic
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

Brenda Kann
230 Huron St.
Grayling, MI
49738

Oakland 4 County DHHS- via electronic
mail

L. Bengel- via electronic mail

OIG Hearings- via electronic mail

DHHS Department Rep.

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

DHHS

Renee Swiercz
51111 Woodward Ave 5th Floor
Pontiac, MI
48342

Petitioner

