

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Registration. No: 2007-6870
Issue No: 3020; 4060
Case No: [REDACTED]
Hearing Date: July 6, 2011
Allegan County DHS

Administrative Law Judge: Mark A. Meyer

HEARING DECISION

This matter is before the undersigned Administrative Law Judge in accordance with 7 CFR 273.18, 45 CFR 233.20(a)(13), MCL 400.9, MCL 400.37, MCL 400.43(a), MCL 24.201, *et seq.*, and 1999 AC, R 400.941, upon a hearing request by the Department of Human Services (the Department) to establish a debt based on an overissuance of benefits to Respondent. Following due notice mailed to Respondent, a hearing was held on July 6, 2011. Respondent appeared at hearing and provided testimony. The Department of Human Services (the Department) was represented by agency personnel.

ISSUE

In dispute was whether Respondent received an overissuance of Food Assistance Program (FAP) benefits, which entitled the Department to recoupment.

FINDINGS OF FACT

Based on the competent, material, and substantial evidence on the whole record, the Administrative Law Judge finds as relevant fact:

1. During the time period in issue, March 2005 through February 2006, Claimant was part of a group size of four receiving FAP benefits. (Department's Exhibits D-1; D-2)
2. The total amount of FAP benefits received by Claimant during this time period was [REDACTED]. (Department's Exhibits D-1; D-2.)
3. During the period in issue, Claimant received earned income of [REDACTED] per month for providing home help services to her adult daughter. (Department's Exhibits D-2; D-6.)

4. In 2005, Claimant's husband received just over [REDACTED] per month in self-employment income. (Department's Exhibit D-5.)
5. Although this information was provided by Claimant to the Department, the agency failed to include the home help services income and self-employment income in computing the FAP benefit budget for the group. (Department's Exhibits D-1; D-2; Department's hearing summary, dated September 27, 2006.)
6. Recognizing its error, the Department computed FAP budgets for each of the [REDACTED] months in the relevant period, this time including Claimant's home help services income and her husband's self-employment income. Based on the inclusion of this income, it was determined that Claimant was entitled to receive FAP benefits totaling [REDACTED] for the period March 2007 through February 2006. (Department's Exhibits D-1; D-2.)
7. On September 13, 2006, the Department informed Claimant that she was responsible for repaying the overissuance of FAP benefits in the amount of [REDACTED]. (Department's Exhibit D-1.)
8. In response, Claimant submitted a hearing request contesting the Department's attempt to recoup the overissuance. (Claimant's hearing request, dated September 20, 2006.)

CONCLUSIONS OF LAW

FAP – formerly known as the Food Stamp Program – was established by the Food Stamp Act of 1977, 7 USC 2011, *et seq.*, as amended, and is implemented through federal regulations found in the Code of Federal Regulations (CFR), 7 CFR 273.1 *et seq.* The Department administers the FAP under MCL 400.10, *et seq.*, and Rules 400.3001 through 400.3015. Agency policies pertaining to the FAP for the period in issue are found in the Program Administrative Manual (PAM), Program Eligibility Manual (PEM), and Program Reference Manual (PRM). The goal of the FAP is to ensure sound nutrition among children and adults. PEM 230B, p. 1.¹

In completing a FAP budget to determine eligibility or benefit level, the entire amount of countable and available income, both earned and unearned, is used. PEM 505, p 2. Countable income is defined as "income remaining after applying [applicable agency policy]." PEM 500, p. 1. All income that is not specifically excluded is deemed countable income. PEM 500, p. 1.

¹ All citations are to Department of Human Services (Department) policy in effect at the time of the agency action in this case.

Earned income means income received from another person or organization, or from self-employment, for duties that were performed for compensation or profit. PEM 500, p. 1. Unearned income is all income that is not earned. PEM 500, p. 1.

The Department determines FAP eligibility and benefit amount using: (1) actual income (income that was already received), and (2) prospective income (income amounts not received but expected). PEM 505, p 1.

An individual who runs their own business is self-employed. This includes but is not limited to selling goods, farming, providing direct services, and operating a facility that provides services such as adult foster care home or room and board. PEM 500, p 12. Countable income from self-employment equals the total proceeds minus allowable expenses of producing the income. PEM 500, p. 13. Income from self-employment is considered earned income. PEM 500, p. 1.

Here, the evidence presented established that Claimant's husband received self-employment income in 2005 of [REDACTED], or [REDACTED] per month. See PEM 505, p. 7.

For FAP budgeting purposes, home help services payments received by an individual providing the services is countable as that person's employment income (i.e., wages). PEM 500, p. 17.

Again, the record in this matter established that Claimant received income of \$614.04 per month for providing home help services to her daughter during the time period in issue.

Clients receiving FAP benefits are responsible for reporting changes in circumstances that have the potential for affecting eligibility or benefit amount. PAM 105, p. 7. This includes the proper and correct reporting of income, both earned and unearned. PAM 105, p. 7. Claimant did so here. But, the Department admitted that, for the period March 2005 through February 2006, the agency failed to include in Claimant's FAP budget the income she received for providing home help services. The agency further admitted that it failed to include within the budget self-employment income received by Claimant's husband.

When the Department is made aware of, or the client reports, a change in income that will affect eligibility or benefit level, a new FAP budget must be completed. PEM 505, p. 8. Recognizing its error here, the agency recomputed Claimant's FAP budget to include the neglected income. The result of the Department's error was a determined overissuance of FAP benefits to Claimant in an amount totaling [REDACTED].

An overissuance is the amount of benefits issued to a client in excess of what he or she was entitled to receive. PAM 700, p. 1; see also PAM 705, p. 4. When this occurs, the Department must attempt to recoup the overissuance. PAM 700, p. 1.

There are agency errors and client errors that result in overissuances. An agency error occurs when incorrect action is taken by the Department. PAM 700, p. 3; PAM 705, p. 1. For the time period in issue, the threshold for pursuing recoupment of the overissuance was [REDACTED] or more PAM 700, p. 3. A client error occurs when the client received more benefits than he or she was entitled to because the client provided incorrect or incomplete information to the Department. PAM 700, p. 4. For the time period in issue, the Department did not seek recoupment of an overissuance caused by client error unless the amount was [REDACTED] or more.² PAM 700, p 5.

Generally, when a client is currently in an active FAP benefits case, the Department will seek to recoup the determined overissuance from those benefits. See PAM 705, pp. 7-8; PAM 715, pp. 8-9. In those situations, it is the client who must file a timely request for hearing to contest the recoupment action. PAM 705, pp. 7-8; PAM 715, pp. 8-9. But, when an overissuance is determined and the client is not currently within an active benefits case, the Department must request a hearing to establish the outstanding debt. See PAM 705, p. 8; PAM 715, p. 9. The agency did so here.

Overissuances on active programs are repaid by:

- Lump sum cash payments.
- Monthly cash payments (when court ordered).
- Administrative recoupment (benefit reduction).

[PAM 725, p. 7.]

Overissuance balances on inactive cases must be repaid by lump sum or monthly cash payments unless collection is suspended. PAM 725, p. 9.

Repayment of an overissuance is the responsibility of:

- Anyone who was an eligible, disqualified, or other adult in the program group at the time the overissuance occurred.
- A Food Assistance Program (FAP) authorized representative if they had any part in creating the FAP overissuance.

PAM 725, p. 1.

Here, Claimant did not necessarily contest the existence of an overissuance of FAP benefits for the time period in issue. Rather, according to Claimant, her husband's self-employment income between March 2005 through February 2006 fluctuated because of his mental and physical conditions. Claimant, however, provided no documentation

² The recoupment threshold for an overissuance due to either Department or client error was lowered to [REDACTED] or more, effective August 1, 2008. Bridges Administrative Manual (BAM) 700, pp. 4, 7; BAM 705, p. 1.

substantiating this variable income. Her application for FAP benefits stated that her husband's self-employment income would be verified by tax returns. At hearing, the Department submitted a copy of a federal 2005 Schedule C indicating that Claimant's husband's gross receipts for that year totaled [REDACTED], with expenses of [REDACTED]. Thus, his net self-employment income was sufficiently demonstrated to be [REDACTED], for an average monthly income in 2005 of just over [REDACTED].

A review of the Department's revised FAP budget calculations, which included the neglected home help and self-employment income, revealed that the agency used the information provided by Claimant concerning this income. The Department credibly established that after the inclusion of Claimant's home help income and her husband's self-employment income, she received an overissuance of FAP benefits in the amount of [REDACTED].

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, the Administrative Law Judge decides that Respondent received an overissuance of FAP benefits for the time period March 2005 through February 2006.

Therefore, the Department is entitled to recoup the FAP overissuance from Respondent, in the amount of [REDACTED].

It is SO ORDERED.

/s/ _____
Mark A. Meyer
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: July 19, 2011

Date Mailed: July 20, 2011

2007-6870MAM

NOTICE: Respondent may appeal this decision and order within 60 days of the above mailing date. The appeal may be made to the circuit court for the county in which Respondent resides or has his or her principal place of business in this State, or in the circuit court for Ingham County. Administrative Hearings, on its own motion, or on request of a party within 60 days of the above mailing date, may order a rehearing.

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