

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No.: 200724236
Issue No.: 3052
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: July 28, 2010
Muskegon County DHS

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the claimant's request for a hearing. After due notice, a telephone hearing was held on July 28, 2010. The claimant appeared and testified. On behalf of Department of Human Services (DHS), [REDACTED], Manager, and [REDACTED], Recoupment Specialist, appeared and testified.

ISSUE

Whether DHS properly sought recoupment of \$282 in over-issued FAP benefits from Claimant.

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Claimant was an ongoing FAP recipient.
2. As of 8/2006, Claimant reported that he lived with his mother at a street address of [REDACTED].
3. DHS opened a FAP case for Claimant with a FAP group size of one person.
4. Claimant received FAP benefits of \$45/month in 8/2006 and 9/2006 and \$48/month for benefit months from 10/2006 through 1/2007.

5. On 12/28/06, DHS received an allegation via the Welfare Fraud Hotline that Claimant was living at a residence different than what he reported to DHS; specifically, it was alleged that beginning 4/2006 Claimant moved to [REDACTED] to live with different household members including Claimant's child and the child's mother, [REDACTED].
6. Based on their investigation, DHS terminated Claimant's FAP benefits case effective 1/31/2007 and added Claimant as a group member on a previously opened benefits case in which [REDACTED] was the grantee.
7. DHS seeks recoupment of \$282 in FAP benefits issued to Claimant between 8/2006 through 1/2007.
8. Claimant requested a hearing on 4/18/07 disputing the recoupment attempt by DHS.

CONCLUSIONS OF LAW

The Food Assistance Program (FAP) (formerly known as the Food Stamp (FS) program) is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department of Human Services (formerly known as the Family Independence Agency) administers the FAP program pursuant to CML 400.10 *et seq.*, and MAC R 400.3001-3015. Current department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM). At the time of the initial recoupment attempt, DHS policies were found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the over-issuance (OI). PAM 700 at 1. An OI is the amount of benefits issued to the benefit group in excess of what they were eligible to receive. *Id.* Recoupment is a DHS action to identify and recover a benefit OI. *Id.*

An OI caused by 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. *Id.* at 5. Note that an over-issuance of benefits caused by client error is not an allegation that the misreporting was done intentionally. OIs are not established if the OI amount is less than \$125. *Id.* at 7.

In the present case, DHS alleges that Claimant gave incorrect information regarding his residence causing an over-issuance of \$282 in FAP benefits from 8/2006-1/2007. The allegation began with an anonymous complaint to the DHS Welfare Fraud Hotline.

Claimant testified that the allegation made to the Welfare Fraud hotline was probably from one of the mother's of his children, and that her motive was to get Claimant in trouble. An anonymous allegation to the Welfare Fraud Hotline has no merit as a basis supporting the allegation without supporting testimony of the complaint. The person make the complaint did not participate in the hearing. Without supporting testimony, the allegation itself may not be a basis for finding that Claimant misreported his residence.

DHS alleged that Claimant admitted to a fraud investigator and a previously assigned DHS specialist that he lived with [REDACTED] from 8/06-1/07. The previously assigned specialist and fraud investigator were not witnesses at the administrative hearing. The undersigned is not inclined to consider these allegations without supporting testimony from the witnesses who allegedly heard Claimant's admission.

DHS also indicated that Claimant stated that he stayed with [REDACTED] 3-4 times per week at a prehearing conference held on 5/7/07. DHS provided supporting testimony for this admission by Claimant. Claimant responded that he stayed with [REDACTED] only 3-4 times per month and the DHS staff misinterpreted Claimant's statement. The undersigned is more inclined to believe that the DHS staff heard Claimant's allegation correctly than not. Based on Claimant's own admission, it is found that Claimant lived at [REDACTED] [REDACTED] 3 or 4 times per week between 8/06-1/07.

Claimant's admission does not necessarily lead to a conclusion that Claimant lives at [REDACTED]. Living at a residence 3-4 times per week equates to living somewhere else 3-4 times per week. If Claimant lives at [REDACTED] when he is not residing at [REDACTED], Claimant could be considered to be a resident of either address.

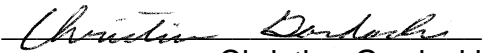
DHS policy gives guidance in determining the appropriate address for minor children who live with multiple caretakers. If the minor child spends virtually half of the days in each month, averaged over a twelve-month period with each caretaker, the caretaker who applies and is found eligible first, is the primary caretaker. PEM 212 at 3. Applied to Claimant's circumstances, Claimant spends virtually half of his time at multiple addresses so either address would seem to be an appropriate address.

Claimant credibly testified that his address has always been listed with the Secretary of State at [REDACTED]. DHS had no evidence to prove otherwise. It is reasonable for Claimant to maintain a residence with his mother but spend half of his time at another residence. Spending time at a second residence does not mean that a person has foregone their primary residence. It is found that DHS is not entitled to recoupment of \$282 in FAP benefits based on the allegation that Claimant does not reside at [REDACTED].

DECISION AND ORDER

The actions taken by DHS are REVERSED. The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS improperly sought recoupment of \$282 in FAP benefits from Claimant. It is ordered that DHS stop further recoupment action on Claimant and to supplement Claimant for any portion of the \$282 that has been recouped.

/s/


Christian Gardocki
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: August 11, 2010

Date Mailed: August 11, 2010

NOTICE: The law provides that within 30 days of receipt of the above Decision and Order, the respondent may appeal it to the circuit court for the county in which he/she lives.

CG/ hw

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