

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],
Claimant

Reg. No: 2008-10589
Issue No: 3020
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 6, 2009
St. Clair County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne L. Keegstra

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on October 6, 2009. The claimant did personally appear and provide testimony.

ISSUE

Did the claimant receive an overissuance (OI) of Food Assistance Program (FAP) benefits from October, 2006 through February, 2007 that the department is entitled to recoup?

FINDINGS OF FACT

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

1. On June 30, 2006, the claimant submitted an application for FAP benefits. On this application she reported that she worked as a bus driver for the [REDACTED] and that she received child support income. (Department Exhibit 65 – 68).

2. The department ran a FAP budget for the claimant that included only the child support income. This resulted in a monthly FAP benefit of \$278.00.

(Department Exhibit 63 -64).

3. The claimant submitted a Semi-Annual Contact Report (DHS-1046) on November 14, 2006. On this report, the claimant again reported working for the [REDACTED]. (Department Exhibit 59).

4. A July 7, 2007, Quarterly MESC Wage Match report showed the claimant was receiving earnings from her employment with the [REDACTED].

(Department Exhibit 54).

5. On August 1, 2007, the department received clarification from the Office of Policy Clarification that the claimant's income should be averaged over 12 months as she was employed during the school year. (Department Exhibit 23).

6. On October 30, 2007, the department received a completed Verification of Employment (DHS-38) from the [REDACTED]. (Department Exhibit 48 – 49)

7. When the claimant's employment income was properly budgeted, an overissuance (OI) resulted. The claimant received \$284.00 in FAP benefits each month from October, 2006 through February, 2007. The claimant should have received \$10.00 each month, which resulted in an OI of \$1370.00 for this time period. This was determined to be agency error.

(Department Exhibit 2, 4).

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 (DHS or department) administers the FAP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3001-3015. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Department policy states:

BENEFIT OVERISSUANCES

DEPARTMENT POLICY

All Programs

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the overissuance (OI). This item explains OI types and standard of promptness. PAM, Item 700, p. 1.

Definitions

The **Automated Recoupment System (ARS)** is part of CIMS that tracks all FIP, SDA and FAP OIs and payments, issues automated collection notices and triggers automated benefit reductions for action programs.

Overissuance Type identifies the cause of an overissuance.

Recoupment is a DHS action to identify and recover a benefit overissuance. PAM 700, p. 1.

PREVENTION OF OVERISSUANCES

All Programs

DHS must inform clients of their reporting responsibilities and act on the information reported within the standard of promptness. PAM 700, p. 2.

During eligibility determination and while the case is active, clients are repeatedly reminded of reporting responsibilities, including:

- Acknowledgments on the application forms, **and**

- . Explanation at application/redetermination interviews, **and**
- . Client notices and program pamphlets.

DHS must prevent OIs by following PAM 105 requirements and by informing the client or authorized representative of the following:

- . Applicants and recipients are required by law to give complete and accurate information about their circumstances.
- . Applicants and recipients are required by law to promptly notify DHS of any changes in circumstances within 10 days.
- . Incorrect, late reported or omitted information causing an OI can result in cash repayment or benefit reduction.
- . A timely hearing request can delete a proposed benefit reduction. The client must repay the OI if:
 - .. the hearing request is later withdrawn, **or**
 - .. the State Office of Administrative Hearings and Rules (SOAHR) denies the hearing request, **or**
 - .. the client or administrative hearing representative fails to appear for the hearing and SOAHR gives DHS written instructions to proceed, **or**
 - .. the hearing decision upholds the department's actions.

See PAM 600

Record on the application the client's comments and/or questions about the above responsibilities. PAM 700, p. 2.

OVERISSUANCE TYPES

Department Error

All Programs

A department error OI is caused by incorrect action (including delayed or no action) by DHS 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 or machine errors occurred
- . Information was not shared between department divisions (services staff, Work First agencies, etc.)
- . Data exchange reports were not acted upon timely (Wage Match, New Hires, BENDEX, etc.)

If unable to identify the type of OI, record it as a department error.

FIP, SDA, CDC, and FAP

Department error OIs are not pursued if the estimated OI amount is less than \$500 per program.

Exception: There is no threshold limit on CDC **system** errors. RRS in central office will recoup these types of overissuances.

FIP, SDA and FAP Only

Note: The department error threshold was lowered to \$500 effective April 1, 2005 and retroactive back to September 1, 2003. If the department error includes September 2003, the \$500 threshold applies. If all months of the error are prior to September 2003, the \$1,000 threshold applies.

FIP and SDA Only

Treat an OI due to excess assets as a department error **unless** IPV caused it.

CDC Only

CDC department errors and CDC provider department errors must be pursued beginning October 1, 2006. If the CDC department error OI period included the month of October 2006, include the

months previous to October 2006 when determining the OI amount.

Note: Department errors will be assigned to the provider or the client depending on the type of department error that occurred. See PAM 705 for examples.

MA, SER and ESS Only

Recoupment of department error OIs are not pursued. PAM 700, pp. 3-4.

Client Error

All Programs

A **client error** OI 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 results in deletion of a DHS action, **and**

- . The hearing request is later withdrawn, **or**
- . SOAHR denies the hearing request, **or**
- . The client or administrative hearing representative fails to appear for the hearing and SOAHR gives DHS written instructions to proceed, **or**
- . The hearing decision upholds the department's actions. See PAM 600. PAM Item 700, p. 5.

OVERISSUANCE THRESHOLD

FIP, SDS, CDC and FAP Only

Department error OIs are not pursued if the estimated OI amount is less than \$500 per program.

Client error OIs are not established if the OI amount is less than \$125, unless:

- . the client or provider is active for the OI program, or

- the OI is a result of a Quality Control (QC) audit finding. PAM 700, p. 7.

The OI period is from October, 2006 through February, 2007. During this time, if the claimant's employment income had been budgeted properly, she would only have been eligible for \$10.00 each month in benefits. However, because the claimant's employment income was not budgeted properly, she received \$284.00 in FAP benefits. This produces an OI of \$1370.00, which the department is requesting to be recouped.

Department policy provides that a department error OI will be pursued if the amount of the OI is \$500.00 or more. PAM 700. In this case, the amount of the OI is \$1370.00, so it is eligible to be recouped, even as a department error.

However, in this case, the claimant has produced evidence that she filed for bankruptcy and that this debt was discharged in bankruptcy (see Exhibit 70). Department policy does indicate that a bankruptcy does suspend collection actions. PEM 725. Further, if the claimant is issued a "discharge of debt" is can discharge the DHS debt. In this case, the claimant testified that she did list DHS as one of her debts and that it was discharged in the bankruptcy. The claimant produced the "discharge of debt" which shows that her debts were discharged with a Chapter 7 bankruptcy. Thus, the department is unable to collect on any recoupment action.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department properly determined there was an OI of \$1370.00 from October, 2006 through February, 2007. However, the department is not able to recoup the OI as the debt has been discharged via the claimant's bankruptcy.

Accordingly, the department's decision is UPHELD in that an OI is established, but no collection action can be authorized due to the discharge of the debt. SO ORDERED.

/s/
Suzanne L. Keegstra
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: October 22, 2009

Date Mailed: October 26, 2009

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 60 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

SLK 

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