

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.: 2008-11755
Issue No.: 3052
Case No.: [REDACTED]
Hearing Date: February 23, 2011
Oakland County DHS (03)

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 DHS request for a hearing. After due notice, a telephone hearing was held on February 23, 2011. On behalf of Department of Human Services (DHS), [REDACTED], Recoupment Specialist, appeared and testified. Respondent failed to appear.

ISSUE

Whether DHS established a basis to pursue debt collection actions against Respondent for \$1056 in allegedly over-issued Food Assistance Program (FAP) benefits.

FINDINGS OF FACT

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

1. From 2/2007-4/2007, Respondent was an ongoing FAP benefit recipient.
2. From 2/2007-4/2007, DHS should have budgeted employment income (see Exhibit 12) on behalf of FAP group member [REDACTED].
3. From 2/2007-4/2007, DHS failed to budget employment income on behalf of FAP group member [REDACTED].
4. From 2/2007-4/2007, Respondent received \$1056 in FAP benefits (\$352/month) (see Exhibit 2).
5. Had DHS properly budgeted [REDACTED] [REDACTED] employment income, Respondent would have received \$0 in FAP benefits for each month between 2/2007-4/2007 (see Exhibits 3-4.)

6. On an unspecified date, DHS mailed Respondent a DHS-4358 (Exhibits 6-9) informing Respondent of the intent to pursue debt collection actions over \$1056 in allegedly over-issued FAP benefits against Respondent.
7. On 12/28/07, Respondent requested a hearing to dispute the debt collection actions.

CONCLUSIONS OF LAW

The Food Assistance Program (formerly known as the Food Stamp 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 Michigan Compiled Laws 400.10, *et seq.*, and Michigan Administrative Code R 400.3001-3015. DHS policies are currently found in the Bridges Administrative Manual (BAM) and the Bridges Eligibility Manual (BEM). At the time of the alleged over-issuance, 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 client group in excess of what they were eligible to receive. *Id.* Recoupment is a DHS action to identify and recover a benefit OI. *Id.*

Over-issuances on active programs are repaid by either lump sum cash payments, monthly cash payments (when court ordered) or administrative recoupment (benefit reduction). PAM 725 at 4. Administrative recoupment takes a percentage of the client's benefits to repay DHS for over-issued benefits.

For over-issued benefits to clients who are no longer receiving benefits, DHS may request a hearing for debt establishment and collection purposes. The hearing decision determines the existence and collectability of a debt to the agency. PAM 725 at 13. DHS requests a "Debt Collection Hearing" when the grantee of an inactive program requests a hearing after receiving the DHS-4358B, Agency and Client Error Information and Repayment Agreement. Active recipients are afforded their hearing rights automatically, but DHS must request hearings when the program is inactive. *Id.*

DHS is to request a debt collection hearing only when there is enough evidence to prove the existence and the outstanding balance of the selected OIs. *Id.* at 15. Existence of an OI is shown by:

- A court order that establishes the OI, or

- A signed repay agreement, or
- A hearing decision that establishes the OI, or
- If a repay, court/hearing decision cannot be located,
- Copies of the budgets used to calculate the OI, and
- Copies of the evidence used to establish the OI, and
- Copies of the client notice explaining the OI. PAM 725 at 15.

OI balances on inactive cases must be repaid by lump sum or monthly cash payments unless collection is suspended. *Id.* at 6. Other debt collection methods allowed by DHS regulations include: cash payments by clients, expunged FAP benefits, State of Michigan tax refunds and lottery winnings, federal salaries, federal benefits and federal tax refunds. *Id.* at 7.

In the present case, DHS established that Respondent received \$352/month of FAP benefits from 2/2007-4/2007. The FAP benefits were verified by an IATP (Exhibit 1) which showed Respondent's FAP benefit issuance history.

DHS later discovered that a member of Respondent's FAP benefit group, Adam Thrush, had employment income from 2/2007-4/2007 that was not budgeted in the original determination of Respondent's FAP benefits from 2/2007-4/2007. DHS verified the employment income from 2/2007-4/2007 through Mr. Thrush's employer, Avasi Service Inc. (see Exhibit 12). After DHS added Mr. Thrush's employment income to the original FAP budgets from 2/2007-4/2007 (see Exhibits 3-4), it was determined that Respondent should have received \$0/month in FAP benefits from 2/2007-4/2007. The difference in FAP benefits between what Respondent received and should have received was \$1056 in FAP benefits.

The undersigned considered rejecting the DHS budgets from 2/2007-4/2007. DHS added the [REDACTED] for [REDACTED] after already budgeting full-time employment for [REDACTED] with [REDACTED]. The employment with [REDACTED] was not verified during the administrative hearing. DHS presumed [REDACTED] employment with [REDACTED] because that is what was originally budgeted as employment income for [REDACTED]. [REDACTED] employment with [REDACTED] paid more than his income with [REDACTED]. Thus, DHS alleges that [REDACTED] had one full-time job (with [REDACTED] and a second job that paid \$11.61/hour (per employment verification) that paid no less than \$400 in weekly gross income from 2/2007-4/2007. Essentially, DHS alleged that [REDACTED] had two full-time jobs.

DHS made attempts during the hearing to verify that [REDACTED] actually worked for [REDACTED] from 2/2007-4/2007 but was not able to verify the employment. Though it is a reasonable possibility that [REDACTED] did not have two full-time jobs the undersigned must find that DHS was correct in budgeting income from both jobs for [REDACTED]. Working two full-time jobs, though unusual, is not unprecedented and is not by itself

evidence of a miscalculation by DHS. Respondent was provided with an opportunity to appear for the hearing to dispute any aspects of the DHS budget; Respondent chose to not appear. As Respondent did not dispute the DHS budgeting of [REDACTED] employment, the undersigned is not inclined to find fault with the DHS calculation. It is found that DHS properly determined Respondent's correct FAP benefits from 2/2007-4/2007 as \$0/month.

It should also be noted that the testifying DHS Specialist, [REDACTED], stated though DHS could not verify [REDACTED] employment with [REDACTED] at the time of the hearing, she had methods to verify whether this employment was ongoing from 2/2007-4/2007. [REDACTED] indicated that she and DHS wish to only recoup benefits from persons that were over-issued benefits. [REDACTED] voluntarily committed herself to researching the issue further on behalf of Respondent and assured that she would redetermine Respondent's FAP benefits from 2/2007-4/2007 if it is learned that [REDACTED] did not have employment with [REDACTED] during this time. The undersigned would have no authority to enforce the promise made by [REDACTED] though her promise sounded very sincere.

Though the over-issuance was completely the fault of DHS, DHS established all necessary requirements to recoup the \$1056 in FAP benefits. As indicated above, DHS may recoup over-issued benefits even if it their error which caused the OI. It is found that DHS may pursue debt collection actions against Respondent for \$1056 in over-issued FAP benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS established that Respondent received \$1056 in over-issued FAP benefits. It is further found that DHS may pursue debt collections against Respondent due to the over-issuance. The actions taken by DHS are AFFIRMED.

Christian Gardocki

Christian Gardocki
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: 3/1/2011

Date Mailed: 3/1/2011

200811755/CG

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 Respondent 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 of the rehearing decision.

CG/JG

cc:

