

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: 2008-13308

Issue No: 3020

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

July 29, 2009

Lapeer County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

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 conducted from Detroit, Michigan on July 29, 2009. The Claimant appeared and testified at the hearing along with his wife, [REDACTED]. Michael Hoard, FIM, appeared on behalf of the Department.

ISSUE

Whether the Department is entitled to reduce Claimant's FAP benefits in order to recoup for a \$3,985.00 FAP over-issuance for the period from March, 2005 through March 2006 due to the Department's failure to properly include Claimant's mother's social security income?

FINDINGS OF FACT

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

1. The Claimant has been an active FAP recipient.

2. Claimant filled out an application for benefits on 3/3/05 and 2/20/06 requesting FAP benefits for him and all family members, including his mother. Exhibits 1 and 2. On each of these applications, Claimant indicated that his mother was included in the group that buy, fix and eat food together.
3. On 3/30/06, Claimant filed another application indicating that Claimant's mother did not buy, fix or eat food with the rest of the family and declining FAP benefits for the mother. Exhibit 3.
4. A FAP budget was calculated including Claimant's mother in the number of persons in the group.
5. The Department failed to include Claimant's mother's income in the FAP budget.
6. The Department referred the case to a Recoupment Specialist ("RS") for investigation.
7. As a result of the Agency error, the Claimant received a FAP over-issuance for the period March, 2005 – March, 2006 totaling \$3,985.00. (Exhibit 4A-4D).
8. The Department sent a Notice of Over-issuance to Claimant on June 25, 2007. (Exhibit 4D).
9. Claimant testified that he never received the notice of the over issuance.
10. There was no debt establishment hearing in this case during the time that Claimant's FAP was inactive.
11. Claimant testified that his mother was 85 years old, had suffered from a stroke and heart attack and lived in a hospital bed in his home. In addition, Claimant's mother had difficulty swallowing and she was on a special low cholesterol, low fat liquid diet as a result of a previous surgery that dissected through her vocal cords. Claimant further testified that [REDACTED] delivers three meals per

day to Claimant's mother which was kept in a separate refrigerator in the mother's room. These meals were heated and served by the nursing attendants who attended to Claimant's mother.

12. Claimant testified that he initially made a mistake in filling out the application and including his mother in the benefits.
13. In support of his testimony, Claimant produced an Adult Protective Services Investigation Report dated 12/4/00 where the Claimant's mother reported that she was getting [REDACTED]. (Exhibit 5).
14. The Claimant reapplied for FAP benefits on 2/19/08 and was given an issuance of \$0 due to OI recoupment. Claimant was notified on 2/25/08. (Exhibit 6, p. 1).
15. On March 3, 2008, the Department received the Claimant's written request for a hearing protesting the proposed recoupment action.
16. The Claimant's hearing was originally scheduled for 4/23/08 and was adjourned to allow the recoupment specialist additional time to collect information. There was no recoupment specialist present at the subject hearing on 7/29/09 and no additional evidence was submitted by the Department.

#### CONCLUSIONS OF LAW

The Food Assistance Program, 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"), formally known as the Family Independence Agency, administers the FAP program pursuant to MCL 400.10, *et seq* and MAC R 400.3001-3015. Departmental policies are found in the Program Administrative Manual ("PAM"), the Program Eligibility Manual ("PEM"), and the Program Reference Manual ("PRM").

In this case, the Department seeks recoupment of an over-issuance of FAP benefits due to the Department's failure to include Claimant's mother's social security income in the FAP budget, yet including her as a member of the group. An over-issuance ("OI") occurs when a client group receives more benefits than they are entitled to receive. PAM 700, p. 1. A claim is the resulting debt created by the overissuance of benefits (OI). Id. Recoupment is an action to identify and recover a benefit. Id. The Department must take reasonable steps to promptly correct any overpayment of public assistance benefits, whether due to department or client error. PAMs 700, 705, 715, and 725. An agency error OI is caused by incorrect actions by DHS, DIT staff, or department processes. PAM 705, p. 1. In general, agency error OIs are not pursued if OI amount is under \$500.00 per program. PAM 705, pp. 1-3.

DHS requests hearings for debt establishment and collection purposes on clients. The hearing decision determines the existence and collectability of a debt to the agency on inactive cases. PAM 725, p. 19. The proper mailing and addressing of a letter creates a presumption of receipt. That presumption may be rebutted by evidence. *Stacey v Sankovich*, 19 Mich App 638 (1969); *Good v Detroit Automobile Inter-Insurance Exchange*, 67 Mich App 270 (1976).

FAP benefits are paid based on an individual's family group. The relationship of the people who live together affects whether they must be included or excluded from the group. People included in the group include spouses and children (natural, step and adopted) who purchase and prepare food together. Parents and their children under 22 years of age who live together must be in the same group regardless of whether the child has his/her own spouse or child who lives with the group. PEM 212, p. 1. The relationship(s) of the people who live together affects whether they must be included or excluded from the group. In order to determine a group composition, the Department must first determine if the individual must be

included in the group. If they are not mandatory group members, the Department must determine if the individuals purchase and prepare food together or separately. PEM 212, p. 1.

In the subject case, the Department paid benefits including Claimant's mother in the FAP group, yet failed to include her income in the budget. As a result, there was an over-issuance ruling. Claimant's FAP case was inactive and during this time, the Department did not conduct a debt establishment hearing. Claimant filed for benefits again on 2/19/08 and became aware of the OI when he was denied benefits due to the recoupment. Claimant then filed a hearing request.

The first question to address, therefore, is whether Claimant can raise any issues pertaining to the OI hearing. There is an assumption that Claimant received the notice of over issuance issued on 7/25/07. However, Claimant and his wife both testified that they did not receive it. Claimant's testimony is credible and the Administrative Law Judge, therefore, finds that the presumption of receipt is rebutted. As there was never a debt establishment hearing while Claimant's case was inactive, it follows that Claimant's first notice of the OI debt was following his recent application for benefits on 2/19/08. Accordingly, the undersigned finds it proper to hear testimony regarding the OI.

The second question is whether the OI should have been entered given the evidence presented. There was no recoupment specialist present to testify. Claimant testified that he took steps to remove his mother from his FAP case in March of 2006 when a new application was filed. (Exhibit 3). Claimant testified that his mother's diet required that she be fed a low fat, low cholesterol liquid diet. This was done through [REDACTED]. Furthermore, the meals were kept in a separate refrigerator in the mother's room and were heated by nursing attendants. Claimant also produced a Department document indicating that Claimant's mother was receiving [REDACTED] well before the OI time period. The evidence indicates that Claimant's mother

was receiving, preparing and eating food separately from the rest of the FAP group. As a result, Claimant's mother should not have been included in the FAP budget and the over-issuance was improper.

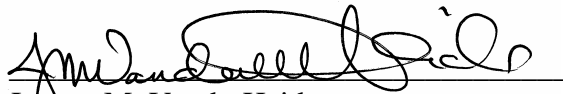
Based on the evidence and testimony presented on the record, the undersigned finds that the Department's denial of FAP benefits based on a 6/25/07 over issuance and recoupment action is REVERSED.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the Department's denial of FAP benefits on 2/25/08 due to a 6/25/07 over issuance finding and subsequent recoupment action was improper.

It is further ORDERED:

1. Claimant's 2/19/08 FAP benefits application be reopened and reprocessed without consideration of the OI recoupment action.
2. If Claimant otherwise qualifies for benefits, supplement the Claimant for any lost benefits he was otherwise entitled to receive.



Jeanne M. VanderHeide  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: 09/09/09

Date Mailed: 09/11/09

**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.

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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.

JV/dj

cc:

