

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: 200816251
Issue No: [REDACTED]
Case No: [REDACTED]
Hearing Date:
March 22, 2011
Ionia County DHS

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to 7 CFR 273.18; 45 CFR 233.20(a)(13); MCL 400.9; MCL 400.37; MCL 400.43(a); MAC R 400.941 and MCL 24.201, *et seq.*, upon a hearing request by the Department of Human Services (department) to establish an overissuance of benefits to Respondent. After due notice was mailed to Respondent, a hearing was held March 22, 2011. Respondent personally appeared and provided testimony.

ISSUE

Whether Respondent received an overissuance of Family Independence Program (FIP) benefits that the department is entitled to recoup?

FINDINGS OF FACT

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

1. Respondent was receiving FIP benefits at all times pertinent to this hearing.
2. Respondent signed Assistance Application (DHS-1171) on September 27, 2007, acknowledging that she understood her failure to give timely, truthful, complete and accurate information about her circumstances could result in a civil or criminal action or an administrative claim against her. (Department Exhibits 7-14).

3. As a result of a Quality Control Audit, the department discovered it had erred by failing to verify Respondent's assets. Verification of assets from Respondent's retirement plan was received by the department on February 6, 2008, the department received verification from Respondent's retirement plan that her IRA was valued at \$41,596.00, and if she were to withdraw monies from it, she would incur a surrender charge of \$2,988.00 and a 10% penalty from the IRS of \$4,159.60. (Department Exhibit 3).
4. Respondent received \$1,909.00 in FIP benefits during the period of October 2007 through February, 2008. If the income had been properly reported and budgeted by the department, the respondent would not have been eligible to receive FIP benefits. (Department Exhibits 1, 4-5, 20).
5. The department failed to verify Respondent's assets, resulting in a FIP overissuance for the months of October 2007 through February, 2008, in the amount of \$1,909.00. (Department Exhibits 1, 4-5, 20).
6. Respondent submitted a hearing request on March 13, 2008, protesting the debt establishment. (Request for a Hearing).

CONCLUSIONS OF LAW

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 USC 601, et seq. The Department of Human Services (DHS or Department) administers the FIP program pursuant to MCL 400.10, et seq., and MAC R 400.3101-3131. The FIP program replaced the Aid to Dependent Children (ADC) program effective October 1, 1996. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), Reference Table Manual (RFT), and the Bridges Reference Manual (BRM).

Departmental policy, BAM 725, Collection Actions, states that when the client group receives more benefits than entitled to receive, DHS must attempt to recoup the overissuance (OI). Repayment of an OI is the responsibility of anyone who was an eligible, disqualified, or other adult in the program group at the time the OI occurred. Bridges will collect from all adults who were a member of the case. OIs on active programs are repaid by lump sum cash payments, monthly cash payments (when court ordered), and administrative recoupment (benefit reduction). OI balances on inactive cases must be repaid by lump sum or monthly cash payments unless collection is suspended.

RETIREMENT PLANS

FIP, SDA, LIF, G2U, G2C, SSI-Related MA and AMP

This section is about the following types of assets:

- Individual retirement accounts (IRAs).
- Keogh plans (also called H.R. 10 plans).
- 401k plans.
- Deferred compensation.
- Pension plans.
- Annuities-- An annuity is a written contract establishing a right to receive specified, periodic payments for life or for a term of years. BEM 400.

Retirement Plan Value

The value of these plans is the amount of money the person can currently withdraw from the plan. Deduct any early withdrawal penalty, but not the amount of any taxes due. Funds in a plan are **not** available if the person must quit his job to withdraw any money. BEM 400.

AVAILABLE FIP, SDA, LIF, G2U, G2C, SSI-Related MA and AMP

An asset must be available to be countable. Available means that someone in the asset group has the legal right to use or dispose of the asset. *Exception:* This does not apply to trusts. There are special rules about trusts. Assume an asset is available unless evidence shows it is not available. An asset remains available during periods in which a guardian or conservator is being sought. This includes situations such as:

- A person's guardian dies and a new guardian has not been appointed yet.
- A court decides a person needs a guardian, but has not appointed one yet.
- A person is unconscious and his family asks the court to appoint a guardian.

Availability might also be affected by joint ownership and efforts to sell or the possibility of domestic violence. BEM 400.

VERIFICATION REQUIREMENTS

FIP, SDA, LIF, G2U, G2C, SSI-Related MA and AMP

Do not require verification when countable assets exceed the limit based on a person's own statement of value. Verify the value of countable assets at application, redetermination and when a change is reported. Verify joint ownership and that the countable amount is less than that presumed by policy at application and when a change is reported. Verify the following factors affecting exclusion of an asset at application, redetermination, and when a change is reported:

- An asset is not available.
- Joint ownership prevents sale (other owner refuses to sell).
- There is a written agreement to repair/replace a damaged or destroyed homestead (cash exclusion for FIP, SDA, LIF, G2U, G2C, SSI-related MA and AMP; land exclusion for SSI-related MA).

- There is a written agreement to purchase another homestead.
- The asset is a bona fide loan. BEM 400.

VERIFICATION SOURCES

FIP, SDA, LIF, G2U, G2C, SSI-Related MA and AMP

The following prove ownership and/or value of assets. You may use the DHS-20, Verification of Assets, the DHS-27, Release of Information, the DHS-503, Asset Verification, or other specified form as appropriate, when assisting a person verify assets. Document information verified by telephone contact on a DHS-223, Documentation Record. Other sources of verification are listed by asset type. For a Retirement Plan, obtain a written statement from the plan administrator or a current plan statement. BEM 400.

The department determines the value of the IRA from the amount of money the person can currently withdraw from the plan. Any early withdrawal penalties are deducted from the amount of money that can be withdrawn, but not the amount of any taxes due. Funds in a plan are not available if the person must quit his job to withdraw any money. An asset must be available to be countable. Available means that someone in the asset group has the legal right to use or dispose of the asset. Verification is not required when the countable assets exceed the limit based on a person's own statement of value. The department may use the DHS-20, Verification of Assets, the DHS-27, Release of Information, the DHS-503, Asset Verification, or other specified form as appropriate, when assisting a person verify assets. Information is document when verified by telephone contact on a DHS-223, Documentation Record. For a Retirement Plan, a written statement or a current plan statement may be obtained from the plan administrator. BEM 400.

In this case, Respondent listed an Individual Retirement Account (IRA), as an asset on her September 27, 2007, FIP application. The department failed to verify the value of the IRA and opened Respondent's FIP case issuing FIP benefits beginning October 1, 2007.

On February 6, 2008, the department verified the amount of money in Respondent's IRA was \$41,596.00. If Respondent were to withdraw the monies, she would have incurred an early withdraw penalty of \$2,988.00, which would be deducted from the \$41,596.00, leaving Respondent with \$38,608.00. The 10% penalty from the IRS of \$4,159.60 for the early withdraw would not have been deducted from her amount of \$38,608.00. Respondent presented no evidence that she had to quit her employment in order to access the funds. Therefore, per departmental policy, the funds are deemed available. The asset limit for FIP benefits is \$3,000.00. BEM 400.

The department admitted that Respondent reported her IRA asset as required and that the department did not follow their own policies in verifying Respondent's assets. Because the department failed to verify Respondent's assets, Respondent received FIP

benefits she was not otherwise entitled too. Regardless of fault, the department must attempt to recoup the overissuance. Here, Respondent received \$1,909.00 during the period of October 2007 through February, 2008. If the department had properly verified Respondent's assets, Respondent would not have been eligible to receive FIP benefits. As a result, Respondent received an overissuance of \$1,909.00.

This Administrative Law Judge finds that the evidence presented by the department shows that Respondent received more benefits that she was entitled to receive. Therefore, Respondent is responsible for repayment of the overissuance.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Respondent received an overissuance of FIP benefits for the time period of October 2007 through February, 2008, that the department is entitled to recoup.

The department is therefore entitled to recoup the FIP overissuance of \$1,909.00 from Respondent.

It is SO ORDERED.

/s/

Vicki L. Armstrong
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: March 24, 2011

Date Mailed: March 24, 2011

NOTICE: The law provides that within 60 days of mailing of the above Decision the Respondent may appeal it to the circuit court for the county in which he/she 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 mailing date of this Hearing Decision, may order a rehearing.

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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.

VLA [REDACTED]

cc: [REDACTED]