

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],
Respondent

Reg. No: 2008-25804
Issue No: 3020
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 17, 2009
Branch County DHS

ADMINISTRATIVE LAW JUDGE: Jay W. Sexton

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37, 7 CFR 273.16, MAC R 400.3130, and MAC R 400.3178 upon the Department of Human Services (department) request for a Recoupment Order to obtain repayment of a FAP overissuance. After due notice, an in-person hearing was held on June 17, 2009, in Coldwater. Respondent personally appeared and testified under oath. Respondent was represented at the hearing by [REDACTED] from [REDACTED].

The department was represented by Dennis Romanoski (Recoupment Specialist).

ISSUE

Did the department correctly decide to recoup a \$543 FAP overissuance caused by the caseworker's failure to budget [REDACTED] child support (\$2,863)?

FINDINGS OF FACT

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

- (1) During the period, January through June 2008, respondent was a FAP recipient. She received a monthly FAP allotment of \$98. Her household size was three.
- (2) Respondent's two minor children resided with respondent and received child support.
- (3) The caseworker correctly budgeted minor child, [REDACTED] child support for the period in question.
- (4) The caseworker failed to budget minor child, [REDACTED] child support (\$2,862) for the period in question.
- (5) Because of the budgeting error made by the caseworker, respondent had a FAP overissuance of \$543.
- (6) Department policy (PAM 705) requires the department to recoup any FAP overissuance totaling more than \$500.
- (7) On June 17, 2008, the recoupment specialist notified respondent (DHS-4358A, B, and C) that she had received a FAP overissuance of \$543 for the period in question.
- (8) On June 17, 2008, the recoupment specialist asked respondent to voluntarily repay the \$543 FAP overissuance.
- (9) On June 27, 2008, respondent refused to sign a FAP Repay Agreement in the amount of \$543 and requested a hearing based on financial hardship.
- (10) On July 1, 2008, the recoupment specialist was notified to begin recoupment action to recover the \$543 overissuance.

(11) Respondent is not a current FAP recipient.

(12) Respondent thinks it is unfair for her to repay the overissuance of \$543 to the department because it would subject her family to great financial hardship.

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).

In this case, the department has imposed a recoupment sanction on respondent due to a \$543 overissuance of FAP benefits for the period January through June 2008. The FAP overissuance occurred due to department error.

The department's manuals provide the following relevant policy statements and instructions for caseworkers:

All FAP overissuances in excess of \$500 must be repaid by FAP recipients, even when the overissuance was caused by department error. PAM 705.

Clear and convincing evidence is evidence that “produce(s) in the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable [the fact finder] to come to a clear conviction, without hesitancy, of the truth of the precise facts at issue.” *In Re Martin*, 450 Mich 204, 277; 538 NW 2nd 399 (1995).

The evidence of record shows that respondent received a FAP overissuance, during the period in question, of \$543.

Based on current department policy, all FAP overissuances, in excess of \$500, must be repaid by the recipient. PAM 705.

At the hearing, respondent argued that it was unfair for the department to require her to repay the FAP overissuance, caused by department error, because it would subject her family to financial hardship.

Unfortunately, the Administrative Law Judge does not have equitable power to consider respondent's financial circumstances in resolving this matter.

The record clearly establishes that respondent received a FAP overissuance of \$543 because her caseworker inadvertently failed to budget all of respondent's child support during the period in question. Therefore, the department correctly decided to recoup the \$543.

DECISION AND ORDER

The Administrative Law Judge, based upon the clear and convincing evidence, decides the respondent is bound by the department's recoupment rules, as stated in PAM 705, and the Administrative Law Judge does not have the equity power to modify the disputed policy in this instance.

The action taken by the department is, hereby, AFFIRMED.

SO ORDERED.

/s/ _____
Jay W. Sexton
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: June 26, 2009

Date Mailed: June 29, 2009

2008-25804/jws

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.

JWS/tg

cc:

