

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: 2009-10008

Issue No: 1030, 3052

Case No:

[REDACTED]

Load No:

Hearing Date:

May 14, 2009

Washtenaw County DHS

ADMINISTRATIVE LAW JUDGE: Marlene B. Magyar

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Department's request for a hearing. After due notice, an in-person hearing was conducted on May 14, 2009. The Department was represented by Yolanda Cole, Recoupment Specialist. Claimant personally appeared and testified.

Claimant was represented by [REDACTED]

[REDACTED] acted

as an interpreter for Claimant.

ISSUE

Whether the Department made an error in computing Family Independence Program (FIP) and Food Assistance Program (FAP) benefits which resulted in an overissuance (OI) to Claimant?

FINDINGS OF FACT

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

(1) On March 4, 2006, April 17, 2006 and November 2, 2006, Claimant completed and signed Application(s) for Public Assistance, DHS-1171. (Exhibit A6)

(2) On August 23, 2007, an Overissuance Referral, DHS-4701, based on unreported earnings was sent to [REDACTED], a Department Recoupment Specialist (RS). (Exhibit A1)

(3) While researching the OI issue, [REDACTED] discovered that Claimant's FIP case had been coded incorrectly.

(4) On October 24, 2008, the Department calculated that Claimant had been overissued FIP benefits in the amount of [REDACTED] and FAP benefits in the amount of [REDACTED] for the months of May 2006 – June 2007. (Exhibits A10-A11)

(5) On October 24, 2008, the Department mailed Claimant a Notice of Overissuance, a Department and Client Error Information and Repayment Agreement, an Overissuance Summary and a Hearing Request for Overissuance or Recoupment Action informing Claimant that she was overissued FIP benefits in the amount of [REDACTED] and FAP benefits in the amount of [REDACTED] for the months May 2006 – June 2007 due to agency error. (Exhibit A12)

(6) On November 13, 2008, the Department received Claimant's hearing request protesting the Department's request for repayment of the OIs. (Hearing Request)

(7) On April 13, 2009, a Notice of Debt Collection Hearing was mailed to Claimant with a hearing date of May 14, 2009. (Notice of 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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

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. Departmental policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM), and the Program Reference Manual (PRM).

An **OI** is the amount of benefits issued to the client group or CDC provider in excess of what they were eligible to receive. When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the OI. PAM, Item 700, p. 1.

An agency error OI is caused by incorrect action by DHS or DIT 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, data exchange reports were not acted upon timely. Agency error OIs are not pursued if the estimated OI is less than \$500 per program. PAM 700, p. 3-4

When a caseworker discovers a potential OI, he or she must take immediate action to correct the current benefits, obtain initial evidence that an OI potentially exists, determine if the OI was caused by department, provider or client actions and refer any OIs needing referral to the RS within **60 days** of suspecting an OI exists. The caseworker must complete a DHS-4701, Overissuance Referral, and refer the following OIs to the RS: all client errors, all suspected IPV errors, all CDC provider errors and all agency errors over \$500. PAM 700, p. 7-8

Within **60** days of receiving the referral, the RS must determine if an OI actually occurred **and** determine the OI type. Within **90** days of determining an OI occurred, the RS must: obtain all evidence needed to establish an OI, calculate the agency error amount, establish the OI discovery date, send a DHS-4358A, B, C & D to the client, enter the FIP, SDA or FAP OI on ARS, send CDC OIs to the local office fiscal unit to start collection and return a DHS-4701A, Overissuance Referral Disposition, to the ongoing worker explaining the final disposition of the OI. PAM 705, p. 3-4

In the instant case, the Department conceded that Claimant bears no blame for the OIs. Claimant did not contest that the OIs occurred or the OIs calculation(s). Rather, Claimant's position was that she should not be responsible for repaying the OIs because (1) the Department did not timely discover and/or inform Claimant of the OIs, (2) repayment would create an undue financial hardship and (3) Given DHS' repeated failure

to comply with its policy regarding Spanish-speaking clients, it is inequitable to require [REDACTED] to repay these overissuances.

The Department clearly did not meet the 60 and 90 day time guidelines for determining whether an OI occurred and, if so, for notifying the client of the alleged OI. However, I do not believe Department policy bars the Department from recouping an OI if it fails to meet these time guidelines. As such, and given that there is no dispute regarding whether or not Claimant was overissued benefits and/or the amount, Claimant's timeliness argument as well as her repayment and accommodation arguments are all equitable in nature.

I certainly do agree with the Department that Claimant did nothing wrong in this case and understand and sympathize with both her frustration and financial situation. However, that does not mean that she should be able to keep benefits to which she is not entitled and, even if I thought otherwise, the undersigned has no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations or overrule or make exceptions to the department policy set out in program manuals. Furthermore, administrative adjudication is an exercise of executive power rather than judicial power and restricts the granting of equitable remedies.

With the above said, I find that the Department acted in accordance with policy in requesting recoupment of [REDACTED] in FIP benefits and [REDACTED] in FAP benefits that were overissued to Claimant.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the Department acted in accordance with policy in

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requesting repayment of [REDACTED] in FIP benefits and [REDACTED] in FAP benefits that were overissued to Claimant. The Department is authorized to recoup the OIs from Claimant.

Accordingly, the Department's FIP and FAP actions are AFFIRMED, it is SO ORDERED.

/S/
Marlene B. Magyar
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: September 30, 2009

Date Mailed: October 1, 2009

NOTICE: The law provides that within 60 days from the mailing date of the above hearing 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.

MBM/db

cc:

[REDACTED]