

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: 2009-1944

Issue No: 3008

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 3, 2009

Kent County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne L. Keegstra

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on March 3, 2009. The claimant personally appeared and testified with the use of interpreter, [REDACTED] a family friend. The record was left open until March 17, 2009, to allow the department to search for and submit any record of the claimant submitting a police report back in 2005 concerning the alleged identity theft.

ISSUE

Did the department properly close the claimant's Food Assistance Program (FAP) benefits in September 2008 due to excess income?

FINDINGS OF FACT

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

1. The claimant was a FAP recipient when the department received information that the claimant had income that she did not report (Department Exhibit #1).

2. The department mailed a Verification of Employment (DHS-38) directly to the employer, who completed it and returned it on August 25, 2008. The form showed someone with the name and social security of the claimant was employed at [REDACTED] and was working 40 hours per week (Department Exhibit #5).

3. The department budgeted the claimant's FAP case with the income from the employment and found the claimant had excess income to receive FAP benefits (Department Exhibit #6).

4. The department mailed the claimant an Eligibility Notice on September 3, 2008, indicating she was no longer eligible to receive food stamps due to her expected hours of employment (Department Exhibit #7).

5. The claimant's FAP case closed on September 16, 2008, due to excess income (Department Exhibit #8).

6. The claimant submitted a request for hearing on October 6, 2008.

7. There is a documentation record in the claimant's file that indicates she called on September 9, 2008, and indicated that her social security number was stolen from her and that she had already reported it to the police department (Department Exhibit #9).

8. The department representative submitted a statement post-hearing with permission that indicates the department found no obsolete file for the claimant from 2005 and that there was no documentation the claimant furnished the department with a copy of the police report at that time (Department Exhibit #11).

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).

Assisting the Client

All Programs

The local office must assist clients who ask for help in completing forms (including the DCH-0733-D) or gathering verifications. Particular sensitivity must be shown to clients who are illiterate, disabled or not fluent in English. PAM, Item 105, p. 9.

VERIFICATION AND COLLATERAL CONTACTS

DEPARTMENT POLICY

All Programs

Verification means documentation or other evidence to establish the accuracy of the client's verbal or written statements.

Obtain verification when:

- . required by policy. PEM items specify which factors and under what circumstances verification is required.
- . required as a local office option. The requirement **must** be applied the same for every client. Local requirements may **not** be imposed for MA, TMA-Plus or AMP without prior approval from central office.
- . information regarding an eligibility factor is unclear, inconsistent, incomplete or contradictory. The questionable information might be from the client or a third party. PAM, Item 130, p. 1.

Obtaining Verification

All Programs

Tell the client what verification is required, how to obtain it, and the due date (see “**Timeliness Standards**” in this item). Use the

DHS-3503, Verification Checklist, or for MA redeterminations, the DHS-1175, MA Determination Notice, to request verification. PAM, Item 130, p. 2.

The client must obtain required verification, but you must assist if they need and request help. PAM, Item 130, p. 2.

Discrepancies

All Programs

Before determining eligibility, give the client a reasonable opportunity to resolve any discrepancy between his statements and information from another source. PAM, Item 130, p. 5.

In this case, the department received an Automatic Fix and Find (AFF) match showing the claimant was receiving income from [REDACTED]. The department indicates in the hearing summary that the Verification of Employment form (DHS-38) was mailed directly to the employer. The employer completed the form and returned it to the department on August 25, 2008. Thus, it is noted that the claimant was not notified or sent any documentation that her name and social security number had shown income received on the AFF match.

The claimant testified that she had reported her social security number had been stolen to the department on previous occasions (she thought, perhaps, back in 2005) and had also provided them with the police report number. After the hearing, the department attempted to retrieve any obsolete case file from 2005 and could not find one. The department testified that they didn't know the claimant's identity had been compromised until she called and told them on September 9, 2008. The department did testify that they had made a referral to the Office of Inspector General (OIG) on the possible overissuance. The OIG investigated the incident and the department representative testified that the OIG confirmed that the subject using the claimant's name and social security number working for [REDACTED] was not the claimant. The department received this confirmation from the OIG on December 4, 2008.

Clearly, the claimant's testimony that she was a victim of identity theft is accurate, as even the OIG found the individual working at [REDACTED] was not the claimant. There is also no dispute that the department budgeted this person's income on the claimant's FAP case and found that, due to this income, the claimant had excess income for FAP. Claimant's FAP case was closed effective September 16, 2008.

However, the department did have knowledge that the claimant was indicating she was the victim of identity theft prior to the case closure. At that point, the department could have proceeded in a few different ways. The department could have referred the case to the OIG and waited for their response until computing the budget. The department could have issued the claimant a Verification Checklist (DHS-3503) for more information, such as the police report number, the actual police report, etc. Finally, the department could have made a collateral contact to [REDACTED] to question the physical characteristics of the person working there to determine if it was the claimant. The department representative testified that the claimant should have provided the police report and then they would not have closed her case due to the income from [REDACTED]. However, the claimant was never sent a Verification Checklist or some other document requiring her to turn in this information. Thus, it seems unreasonable to hold the claimant responsible for not turning in a police report to the department.

Policy requires the department to give the claimant an opportunity to resolve any discrepancy between the claimant's statements and information from other sources. PAM 130, p 5. In this case, the claimant notified the department that her identity had been stolen prior to the closure of the case. Even if the department went forward and budgeted the income and closed the case, it would not have been inappropriate to correct the inaccurate information and re-open the claimant's FAP case once confirmation from OIG was received that the claimant

was, indeed, a victim of identity theft. Clearly, it was not the claimant's fault or mistake. Thus, as claimant was not working at [REDACTED], that income should not have been budgeted on her FAP case.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department improperly budgeted the [REDACTED] income on the claimant's FAP case and that the department should have corrected the error when they received confirmation that the claimant's identity had been compromised. Therefore, the department's action is REVERSED. The department shall:

1. Reopen the claimant's FAP case to the date of closure, September 16, 2008, and re-budget the FAP case, excluding the income from Macatawa Holdings LLC.
2. Issue the claimant any supplemental benefits due her retroactive to the date of closure, September 16, 2008.

SO ORDERED.

/s/ _____
Suzanne L. Keegstra
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: March 12, 2009

Date Mailed: March 13, 2009

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.

2009-1944/SLK

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.

cc:

