

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: 2009-20451
Issue No: 3020
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 1, 2009
Oakland 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 June 1, 2009. The Claimant appeared and testified at the hearing along with [REDACTED]. Jan Carroll, a Recoupment Specialist, appeared on behalf of the Department.

ISSUE

Whether the Department is entitled to recoup an \$870.00 FAP over-issuance for the period from February 2008 through July 2008 due to the Department's failure to budget Claimant's pension 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 is a FAP recipient.

2. Claimant receives \$563.13 per month gross in pension benefits. (Exhibit 2).
3. Claimant receives \$940 per month in RSDI benefits. (Exhibit 7E).
4. Claimant testified that she lives alone.
5. Claimant testified that she pays a mortgage in the amount of \$480.42 plus taxes and utilities.
6. Claimant testified that she currently pays \$107.00 per month for [REDACTED] premium. During the over-issuance period, Claimant testified that the Medicare premium was deducted from the gross payment.
7. Claimant testified also that she pays \$20.00/month for prescription medication and \$32.00/month for [REDACTED] benefits.
8. The Department failed to budget Claimant's pension benefits when calculating FAP benefits.
9. The Department recalculated the Claimant's FAP budget and determined there was an over-issuance of FAP benefits totaling \$870.00. (Exhibits 4 and 5).
10. The Department referred the case to a Recoupment Specialist ("RS") for investigation.
11. As a result of Agency error, the Claimant received a FAP over-issuance for the period from February 2008 through July 2008.
12. The Department sent a Notice of Over-issuance to Claimant on March 6, 2009. (Exhibit 6A).
13. On March 24, 2009, the Department received the Claimant's written request for a hearing protesting the proposed recoupment action.

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”).

The federal regulations define household income to include all earned income. 7 CFR 273.9(b). All monthly income must be converted to a nonfluctuating monthly amount. Only 80% of earned income is counted in determining FAP benefits. PEM 550. Under 7 CFR 273.9, as amended, \$125.00 is deducted from the gross income of FAP recipients in determining FAP grants. Unearned income includes RSDI payments for family members (PEM 500, p. 33). Under 7 CFR 273.9 deductions for excess shelter are also made. PEM 554. Id. There is a standard heat and utility deduction as well as a standard deduction for telephone bills. Id. The standard deductions are a set amount that is applied regardless of the actual expenses incurred by the Claimant.

In this case, the Department seeks recoupment of an over-issuance of FAP benefits due to the Department’s failure to properly include Claimant’s monthly pension income. 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 over-issuance 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.

Based on the evidence and testimony presented on the record, the undersigned finds that the Claimant properly provided income verification to the Department. The Department failed to properly input the pension income and the budget was calculated without the pension income. This failure of the Department resulted in an overpayment for the period February 2008 through July 2008 totaling \$870.00.

Following Claimant's testimony regarding monthly medical obligations, the Department ran a budget to determine whether the additional deductions would affect the overpayment amount. According to the aforementioned policy on budgeting, Claimant had a net income of \$866.00/month. This was obtained by subtracting the standard deduction of \$125.00, the excess shelter amount of \$391.00 and the excess medical of \$113 from the unearned income of \$1503.00. The amount of food assistance allotment is established by regulations at 7 CFR 273.10. A household of one person with a net monthly income of \$866.00 is entitled to a monthly FAP grant of \$10.00 per month. RFT 260. Therefore, this recalculation did not result in any change in the overpayment amount.

Unfortunately, the overpayment is over \$500.00 and pursuant to PAM 705, the Department is entitled to recoupment. While this Administrative Law Judge does not necessarily agree with the Department policy, this Judge's jurisdiction is limited to interpreting whether the Department followed the regulations. Accordingly, the Department's OI and recoupment action is AFFIRMED.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the Department properly calculated the Claimant's FAP benefits to be overpaid in the amount of \$870.00 based on department error.

Accordingly, it is ordered that the OI and recoupment is AFFIRMED.

/s/

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

Date Signed: 06/11/09

Date Mailed: 06/15/09

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.

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

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