

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

██████████

Claimant,

Reg No: 2009-20867
Issue No: 3014/3020/3052
Case No: ██████████
Load No: ██████████
Hearing Date:
June 2, 2009
Kent County DHS

ADMINISTRATIVE LAW JUDGE: Steven M. Brown

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 conducted from ██████████ on June 2, 2009.

ISSUE

Whether the Department made an error in computing Food Assistance Program (FAP) benefits which resulted in an overissuance 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 November 24, 2008, Claimant applied for FAP benefits.
- (2) Claimant listed her mother, ██████████, on the Assistance Application, DHS-1171, as living in the home and not requesting assistance. (Exhibits 1 – 19)

(3) On or about January 15, 2009, Claimant contacted the Department to report a decrease in work hours. At this time, the Department discovered it never budgeted Claimant's mother's earnings as required given that Claimant was under 22 years old () and lived in the same household as her mother so the caseworker eventually made an Overissuance Referral on March 9, 2009. (Exhibits 20, 26)

(4) On March 25, 2009, the Department mailed Claimant a Notice of Overissuance which explained that she was overissued benefits in the amount of () for the months of November and December 2008 and January 2009 due to agency error. (Exhibit 21)

(5) The Department calculated the () based on Claimant receiving () in November 2008 and () in December 2008 and January 2009. The Department noted in the Overissuance Referral - "During a change it was discovered that the () earnings were never included Grantee () is under 22 and lives with Mom. Sent 38 it was never returned. FAP ended 1/31/09 (Exhibits 20, 23, 25)

(6) On April 15, 2009, the Department received Claimant's hearing request protesting the Department's request for recoupment of the overissuance. (Exhibit 27)

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. Departmental policies are

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

Group composition is the determination of which persons living together are included in the FAP program group. To establish FAP group composition, the Department must consider who lives together and their relationship(s), whether the people living together purchase and prepare food together or separately and whether the person(s) resides in an eligible living situation. PEM 212, p.1

The relationships of the people who live together affects whether they must be included or excluded from the group. Spouses who are legally married and live together must be in the same group. Parents and their children under 22 years of age who live together must be in the same group regardless of whether the child has his/her own spouse or child who lives with the group. A person acting as a parent and the children for whom he or she acts as a parent who live with him must be in the same group. PEM 212, p.1

Living together means sharing a home where family members usually sleep and share any common living quarters such as a kitchen, bathroom, bedroom or living room. Persons who share only an access area (e.g., entrance or hallway) or non-living area (e.g., laundry) are not considered living together. PEM 212, p.2

A temporarily absent person is considered to be living in the home. A person's absence is temporary if:

- His/her location is known; and
- There is a definite plan for his/her return; and
- He/she lived with the program group before the absence (newborns are considered to have lived with the group); and
- The absence has lasted or is expected to last 30 days or less. PEM 212, p.2

If it is not a mandatory group member situation, it must be determined if the people purchase and prepare food together or separately. The phrase purchase and prepare together is meant to describe persons who customarily share food in common.

Persons **customarily** share food in common if:

- . they each contribute to the purchase of food; or
- . they share the preparation of food, regardless of who paid for it; or
- . they eat from the same food supply, regardless of who paid for it.

In general, persons who live together and purchase and prepare food together are members of the same FAP group. PEM 212, p.4-5

An overissuance is the amount of benefits issued to the client group or CDC provider in excess of what they were eligible to receive. PAM 705, p.5 The amount of the overissuance is the amount of benefits the group or provider actually received minus the amount the group was eligible to receive. PAM 720, p. 6. When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the overissuance (OI). PAM, Item 700, p. 1. Agency errors are caused by incorrect actions by DHS. PAM 705, p.1 Agency error overissuances are not pursued if the estimated overissuance is less than \$500 per program. PAM 700, p.6

In the instant case, it is clear that the agency made an error in not including Claimant's mother as part of Claimant's group and including her income, if any, in the FAP budget. However, I do not find that the Department established that it is entitled to recoupment of the entire [REDACTED] that Claimant received in the months of November and December 2008 and January 2009. There is no dispute that Claimant received [REDACTED] during those months, but what she was entitled to with her mother's income included in

the FAP budget is a mystery - maybe it is nothing, maybe [REDACTED] because her mother did not have any income or more likely somewhere in between. The Department could not answer at hearing why a new budget was not completed to include Claimant's mother's income, but it appears from the brief note on the Overissuance Referral that the caseworker sent a 38 to Claimant which was never returned. I do not know, however, based on these 6 words if and/or when a Verification Checklist, DHS-3503, and/or a DHS-38 Verification of Employment was sent to Claimant, whether it was not returned at all or not filled out properly, whether Claimant questioned the need for it, assistance in completing, and/or an extension, etc. With the above said, I do not find that the Department established that it acted in accordance with policy in requesting a recoupment of an overissuance of FAP benefits to Claimant.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, does not find that the Department acted in accordance with policy in requesting a recoupment of an overissuance of FAP benefits to Claimant.

Accordingly, the Department's FAP eligibility determination is REVERSED, it is SO ORDERED. The Department shall:

- (1) Mail Claimant a Verification Checklist, DHS-3503, a Verification of Employment, DHS-38, and/or make any other relevant requests to Claimant regarding her mother's earned and unearned income for the time period in question.
- (2) Complete a FAP budget including Claimant's mother's income, if any, for the months of November and December 2008 and January 2009 to determine Claimant's appropriate monthly FAP benefit for each of these months.

(3) Calculate the overissuance based on the \$910 received by Claimant and what she should have received during this time period.

(4) Determine, based on the overissuance amount, whether Department policy dictates that it be repaid by Claimant.

(5) Notify Claimant in writing of the Department's revised determination.

(6) Claimant retains the right to request a hearing if she would like to contest the Department's revised determination.

/s/

Steven M. Brown
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: June 4, 2009

Date Mailed: June 5, 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.

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.

2009-20867/smb

SMB/db

cc:

[REDACTED] gs (2)