

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

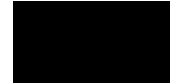


Claimant

Reg. No: 2009-20964

Issue No: 3020

Case No:



Load No:

Hearing Date:

May 27, 2009

Genesee County DHS

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

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 hearing was held on May 27, 2009. Claimant appeared and testified.

ISSUE

Did the Department of Human Services properly determine an over-issuance of Food Assistance Program (FAP) benefits to Claimant in the amount of \$579?

FINDINGS OF FACT

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

(1) On October 9, 2006, Claimant applied for and began receiving Food Assistance Program (FAP) benefits. The application did not list any spousal support payments as income. Claimant was certified for a two year period.

(2) Beginning in September 2007, Claimant's ex-husband began making payments to Friend of the Court on long past due spousal support ordered by the Court in 2002.

(3) In December, 2007 the Department discovered the payments to Friend of the Court. Claimant's financial eligibility was recalculated to include an average amount of spousal support being submitted to Friend of the Court and an increase in Claimant's Retirement, Survivors, Disability Insurance (RSDI) payment. Claimant was sent notice of a reduction in her Food Assistance Program (FAP) benefits. Claimant assumed the change was due to her increased RSDI and did not make any inquiries to the Department.

(4) On October 9, 2008, Claimant was sent another notice of a reduction in her Food Assistance Program (FAP) benefits. This notice stated the change was due to receiving support from a person outside Claimant's home. Claimant contacted her DHS caseworker to inquire about the support income. Claimant was referred to Friend of the Court who informed Claimant the support payments had begun in September and were being applied to a credit card of Claimant's. Further research uncovered the card payments were being applied to. Claimant had not used the credit card for several years and thought the card was a closed account. Claimant obtained a new card and access to the money that had been applied to the card.

(5) On January 29, 2009, Claimant was sent a Notice of Over-issuance. That notice alleges that Claimant received a \$579 over-issuance of Food Assistance Program (FAP) benefits between November, 2007 and October, 2008.

(6) On March 18, 2009, Claimant submitted a request for hearing.

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, Claimant does not dispute the amount of money she eventually received in support payments. Claimant stated she requested a hearing because she does not feel it is fair for her to be penalized when she was neither aware of the money nor did she receive it until after the over-issuance period. Department policy provides the following guidance for caseworkers. The Department's policies are available on the internet through the Department's website.

PEM 500 INCOME

DEPARTMENT POLICY

All Programs

This item discusses income for:

- Family Independence Program (FIP).
- State Disability Assistance (SDA).
- Child Development and Care (CDC).

Note: Applies to all CDC Income Eligible groups.

- Medicaid (MA) which, if policy differs, is divided into:

- FIP-related MA.
- SSI-related MA.
- Specific MA categories.

- Adult Medical Program (AMP).
- TMA-Plus (TMAP).
- Food Assistance Program (FAP).

The phrase “All Programs” in this item means all the programs listed above.

The group composition and program budgeting items specify whose income to count. The program budgeting items might also contain program-specific income deductions or disregards.

Income means benefits or payments measured in money. It includes money a person owns even if NOT paid directly such as stock dividends automatically reinvested and income paid to a representative.

Earned income means income received from another person or organization or from self-employment for duties that were performed for remuneration or profit.

Unearned income means all income that is NOT earned income.

The item specifies whether the income is earned or unearned.

The amount of income counted may be more than the amount a person actually receives because it is the amount before any deductions including deductions for taxes and garnishments. The amount before any deductions is called the **gross** amount.

Exception: The amount of self-employment income before any deductions is called **total proceeds**. The **gross** amount of self-employment income means the amount after deducting allowable expenses from total proceeds, but before any other deductions.

Income remaining after applying the policy in this item is called **countable**.

Count all income that is NOT specifically excluded.

CONTRIBUTION FROM FAMILY AND FRIENDS

All Programs

Money given to a person by family or friends is the person's unearned income. Count the gross amount actually received.

RETIREMENT INCOME-OTHER

All Programs

Refer to the specific sections in this item for policies regarding:

- Railroad Retirement Board benefits.
- Retirement, Survivors and Disability Insurance (RSDI).

- U.S. Civil Service and Federal Employee Retirement System.

Other retirement income includes annuities, private pensions, military pensions, and state and local government pensions. Count the gross benefit as unearned income.

Exception: Sometimes benefits are reduced because of a previous overpayment. In such cases, the reduced amount is the gross amount.

See “[Returned Benefits](#).”

Note: Allowances in pension benefits for the Medicare Part B premium are not considered a reimbursement and should be budgeted as unearned income.

The Department policy cited above specifically states that income includes money a person owns. In this case the money had been transferred to an account which was owned by Claimant. Regardless of whether Claimant was aware of the funds in her account, she owned the money once it was transferred to the account. The Department policy on income does not contain any exclusions or exceptions applicable to Claimant’s unique situation. The Department has acted in accordance with their policies.

Claimant raised the issue that it is not fair to penalize her. Determining fairness is not within the scope of authority delegated to this Administrative Law Judge pursuant to a written directive signed by the Department of Human Services Director, which states:

Administrative Law Judges have 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 the program manuals.

Furthermore, administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940); *Auto-Owners Ins Co v Elchuk*, 103 Mich App 542, 303 NW2d 35 (1981); *Delke v Scheuren*, 185 Mich App 326, 460 NW2d 324 (1990), and *Turner v*

Ford Motor Company, unpublished opinion per curium of the Court of Appeals issued March 20, 2001 (Docket No. 223082).

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department of Human Services properly determine an over-issuance of Food Assistance Program (FAP) benefits to Claimant in the amount of \$579.

It is ORDERED that the actions of the Department of Human Services, in this matter, are UPHELD.

/s/ _____
Gary F. Heisler
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: June 10, 2009

Date Mailed: June 11, 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.

GFH 

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