

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No: 2009241
Issue No: 6004
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date: September 17, 2009
Ingham County DHS

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 claimant's request for a hearing. After due notice, an in-person hearing was held on September 17, 2009 .

ISSUE

Can the Department of Human Services (DHS) attempt to collect on an overissuance debt where that debt was discharged in a Chapter 7 Bankruptcy?

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 January 10, 2008, the DHS approved adoption medical subsidy for claimants' son's placement at Manor Residential Program.
2. On August 21, 2008, the DHS issued a Subsidy Case Closure/Overpayment Notice informing claimants' that claimants' adoption subsidy case would be closed effective January 10, 2008 resulting in an overpayment. The overpayment period was from January 10, 2008 until August 31, 2008 totaling [REDACTED]. Exhibit F.
3. On August 29, 2008, claimant husband and wife filed a hearing request.
4. On [REDACTED], claimant husband and wife filed a Chapter 7 Bankruptcy in the United States Bankruptcy Court for [REDACTED] of [REDACTED].

Michigan. Schedule F lists the Department of Human Services (DHS) regarding the following debt:



Schedule F.

5. The DHS failed to appear at the Meeting of Creditors on December 4, 2008.
6. On [REDACTED], claimant husband and wife granted a Bankruptcy Discharge by the United States Bankruptcy Court for the [REDACTED] of Michigan by [REDACTED].
7. Claimants no longer owe a debt to the DHS on the basis of an overpayment of the Adoption Subsidy Program pursuant to the August 21, 2008 notice.
8. The individual testifying on behalf of the department at the administrative hearing was not familiar with the DHS policy and procedure regarding bankruptcy.

CONCLUSIONS OF LAW

The Adoption Subsidy program is established by MCL 400.115, *et seq.*, and is administered by the Department of Human Services (DHS or department) pursuant to MCL 400.10, *et seq.* Department policies regarding adoption subsidy are found in the Services Manual (SM). The federal law upon which Michigan law is based is Title IV-E of the Social Security Act, Section 473(c).

BAM 725 pertains to DHS Policy regarding bankruptcy:

SUSPENDED COLLECTION ACTIONS

Every OI is entered on BRS even when collection action is pending or suspended. Certain status types suspend all or some collection actions:

Used For

- OIs pending with OIG
- OIs pending with AH
- Bankruptcy
- Death
- WDC dispute

Collection Action

- Suspends all collections actions.
- Suspends all collection actions.
- Suspends all collection actions.
- Suspends all collection actions.
- Suspends all collection actions.

Bankruptcy

When a **bankruptcy notice** for a person with an outstanding OI balance is received, all recoupment must be suspended immediately. Send a copy of the bankruptcy notice to the local fiscal unit supervisor who will complete a **Proof of Claim** (a court document to show the debt owed to DHS) for the court. Refer all IPV OIs to Bureau of Legal Affairs (BLA) for review. BLA makes a recommendation to the Attorney General's office regarding whether to take legal action to block discharge of an IPV debt. BLA informs you whether legal action is taken.

For Wayne County, the Proof of Claim and bankruptcy actions are coordinated by Risk Management in the Office of Special Services.

If the client's bankruptcy petition is granted, the court issues a **discharge of debt**. If DHS is listed as a discharged debt on the court document, you must determine which OIs were discharged. Update BRS by:

1. The local fiscal unit manually writes off OIs that were discharged by the court:
2. Reinstating recoupment for any IPV OIs that were not discharged by the court.
 - . You will receive notification from BLA if any IPV OIs were successfully blocked from discharge.
 - . Change the status type to "administrative recoupment."

If the client withdraws the bankruptcy petition or the court does not grant it, the court issues a **discharge of bankruptcy**. Upon receipt of this document, change the RT code to administrative recoupment on each of the affected OIs to reinstate recoupment.

Keep all bankruptcy documents in the case record's legal packet.

As noted in the DHS Policy and Procedure, and as is consistent with Federal and State law, once a debt is discharged and a Chapter 7 bankruptcy, the debt is no longer owed. The attempt by a creditor to collect is illegal and to do so, depending on the point in time, is a strict violation subject to significant penalty. DHS policy and procedure recognizes this law and its policy reflects the procedures that the department is to take when there is a discharge in order to remove the debt from the internal fiscal unit so as to stop offer the collection in such matters.

The individual representing the department at the Administrative hearing did not seem to be familiar at all with the policy regarding the Bankruptcy action. Claimants' submitted credible evidence to show that the debt has been charged in bankruptcy and thus, there is no debt owing. The department is ordered to remove this debt from its system and stop any recoupment actions and/or any related actions to any collection regarding this matter. The department is ordered to follow its policy and procedure as laid out in BAM Item 725.

It is noted that claimants' has requested another hearing on this matter. There is no need to proceed with another hearing when the evidence clearly shows there is no debt owed. Claimants' subsequent hearing request may not proceed.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department's actions were incorrect.

According, the department's recoupment action, if it still exist on the DHS fiscal records is incorrect and the department is ordered to remove the debt from its system and remove and recoupment action regarding any debt owed by claimants' pursuant to August 21, 2008 overpayment notice. The department is ordered to follow its procedure under the bankruptcy section in BAM 725. There is no debt owed by claimants'.

It is noted that there is no need to go forward with a subsequent hearing request by claimants' on the same issue. Claimant's debt was discharged under the United States Bankruptcy Code pursuant to Section 727(a) and the DHS cannot proceed with any collection regarding this matter.

/s/

Janice Spodarek
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: December 10, 2010

Date Mailed: December 13, 2010

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 90 days of the filing of the original request.

The Claimants' may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the mailing date of the rehearing decision.

JS/ds

cc:



