

STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],  
Respondent

Reg. No: 2009-28994  
Issue No: 3052  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
August 6, 2009  
Genesee County DHS

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to 7 CFR 273.18; 45 CFR 233.20(a)(13); MCL 400.9; MCL 400.37; MCL 400.43(a); MAC R 400.941 and MCL 24.201, *et seq.*, upon a hearing request by the Department of Human Services (department) to establish an overissuance of benefits to respondent. After due notice was mailed to respondent, a hearing was held August 6, 2009, and respondent did appear.

ISSUE

Did the Department of Human Services over-issue Food Assistance Program (FAP) benefits to Claimant in the amount of \$573?

FINDINGS OF FACT

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

- (1) Claimant was an ongoing recipient of Food Assistance Program (FAP) benefits.

- (2) On March 28, 2007, Claimant began employment and reported the employment to Work First. The Department did not recalculate Claimant's financial eligibility using the income she reported.
- (3) In June, 2007 Claimant began a second job and reported it timely to the Department. The Department did not recalculate Claimant's financial eligibility using the income she reported.
- (4) On May 26, 2009, Claimant was sent a Notice of Overissuance.
- (5) On May 29, 2009, Claimant submitted a request for hearing.

#### CONCLUSIONS OF LAW

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 USC 601, *et seq.* The Department of Human Services (DHS or department) administers the FIP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3101-3131. The FIP program replaced the Aid to Dependent Children (ADC) program effective October 1, 1996. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Claimant does not dispute the dollar values or that she received more Food Assistance Program (FAP) benefits than she was eligible for. Claimant asserts it is not fair that she should have to pay it back when the overissuance was the fault of some one else. Department policy provides the following guidance for case workers. The Department's policies are available on the internet through the Department's website.

#### **PAM 705 AGENCY ERROR OVERISSUANCES**

#### **DEPARTMENT POLICY**

### **All Programs**

Recoupment policies and procedures vary by program and overissuance (OI) type. This item explains agency error OI processing and establishment. [PAM 700](#) explains OI discovery, OI types and standards of promptness. [PAM 715](#) explains client error, and [PAM 720](#) explains Intentional Program Violations.

### **Definition**

#### **All Programs**

An **agency error** OI is caused by incorrect actions (including delayed or no action) by DHS or DIT staff or department processes. Some examples are:

- Available information was not used or was used incorrectly.
- Policy was misapplied.
- Action by local or central office staff was delayed.
- Computer or machine errors occurred.
- Information was not shared between department divisions (services staff, Work First! agencies, etc.).
- Data exchange reports were not acted upon timely (Wage Match, New Hires, BENDEX, etc.). If unable to identify the type of OI, record it as an agency error.

### **AGENCY ERROR EXCEPTIONS**

#### **FIP, SDA, CDC and FAP**

Agency error OIs are not pursued if the estimated OI amount is less than \$500 per program.

### **CLIENT NOTIFICATION**

#### **FIP, SDA, CDC and FAP**

Unless recouping from the CDC provider, notify the client group of the agency error OI by sending a completed:

- [DHS-4358A, Notice of Overissuance](#), **and**
- [DHS-4358B, Agency and Client Error Repayment Agreement](#), **and**
- [DHS-4358C, Overissuance Summary](#), **and**
- [DHS-4358D, Hearing Request for Overissuance or Recoupment Action](#).

## **INITIATE RECOUPMENT**

### **All Programs**

#### **FIP, SDA, and FAP**

On the administrative recoupment effective date shown on the DHS-4358B, determine if the client requested a hearing (via DHS-4358D or otherwise):

- If yes, follow the [HEARING REQUESTED](#) section below.

## **HEARING REQUESTED**

### **FIP, SDA, CDC and FAP Only**

#### **Active Cases**

A hearing request on an DHS-4358D must be forwarded to the State Office of Administrative Hearings and Rules (SOAHR) along with a completed DHS-3050, Hearing Summary, and exhibits according to normal hearing procedures. (see [PAM 600](#)).

**Received Timely** If the request is received **before** the AR effective date, file a copy of the DHS-4358A, -B, -C and -D, pending the issue resolution.

- If DHS is **not** upheld, note on the DHS-4358A that recoupment will not be taken.
- If DHS is upheld, enter the OI on ARS for FIP, SDA and FAP only.

Enter all of the following in CIMS:

- Y in the Repay Received field.
- Y in the Repay W/in 30 days field.
- Date of the hearing decision as the establishment date (labeled Notice Sent Date in CIMS).

The claimant's grievance centers on dissatisfaction with the department's current policy.

The claimant's request 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 over-issue Food Assistance Program (FAP) benefits to Claimant in the amount of \$573.

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

Date Signed: October 12, 2009

Date Mailed: October 12, 2009

**NOTICE:** The law provides that within 60 days from the mailing date of the above Hearing Decision the Petitioner may appeal it to the circuit court for the county in which he/she resides or has his or her principal place of business in this state, or in the circuit court for Ingham County. Administrative Hearings, on its own motion, or on request of a party within 60 days of the mailing date of this Hearing Decision, may order a rehearing.

GFH [REDACTED]

cc: [REDACTED]