

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: 2009-29831
Issue No: 3020
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 15, 2009
Wayne 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 October 15, 2009. The Claimant appeared and testified at the hearing. Brenda Philpot, FIM and Darcus Foust, a Recoupment Specialist, appeared on behalf of the Department.

ISSUE

Whether the Department is entitled to recoup a FAP over-issuance for the period of September 2008 to November 2008 due to the Department's failure to add Claimant's income into the FAP and FIP budget?

FINDINGS OF FACT

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

1. Claimant was an active FIP and FAP recipient.

2. Claimant testified that she began working and reported the start of income to her caseworker. (Exhibit 2, p. 14).
3. The Claimant's FIP and FAP budgets were prepared without the inclusion of her income. (Exhibit 2, pp. 9-11).
4. The Department failed to take action to include Claimant's income after it was discovered.
5. The Department recalculated the Claimant's FAP budget and determined there was an over-issuance of FIP and FAP benefits totaling \$1,567.00. (Exhibit 2, p. 9).
6. The Department referred the case to a Recoupment Specialist ("RS") for investigation.
7. As a result of Agency error, the Claimant received a over-issuance for FIP and FAP for the period from September through October, 2008.
8. The Department sent a Notice of Over-issuance to Claimant on May 7, 2009. (Exhibit 1, p 3). The Department recalculated the overissuance and issued a Notice to Claimant on the date of the Hearing, October 15, 2009. (Exhibit 2, pp. 10-12).
9. The Claimant testified that she turned in a shelter verification upon application. The shelter cost was not included in the budgets.
10. The Claimant testified that she was responsible for utility costs which were also not included in the budgets.
11. The Claimant testified that the income used in the overpayment budgets was accurate based on her pay checks received.

12. On May 27, 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 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 (formerly known as the Family Independence Agency) 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).

A. Recoupment

In this case, the Department seeks recoupment of an over-issuance of FIP and FAP benefits due to the Department's failure to properly include Claimant's income in the FIP and FAP budgets. 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

overissuance 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 provided verification of her income and properly informed her caseworker that she was receiving wages. The Department failed to properly input the income and the budgets were calculated without it. The failure of the Department resulted in a FIP and FAP overpayment for the period September and October, 2008. However, based on the evidence at hearing, the Administrative Law Judge finds that the Department did not calculate the budgets properly and, therefore, the amount of FIP and FAP overpayment requested by the Department is not accurate as detailed below. The OI and recoupment action is, therefore, DENIED.

B. FAP

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, \$132.00 is deducted from the gross income of FAP recipients in determining FAP grants. (RFT 250). Unearned income includes SSI payments for family members (PEM 500, p. 33) and child support (PEM 500, p. 10). The average of child support payments received in the past 3 calendar months is used to prospectively calculate child support, unless changes are

expected. Amounts that are unusual and not expected to continue should not be included in the calculation.

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.

When calculating the benefit amount, according to PEM/BEM 556, the Shelter set offs are added together to equal A. The income after deductions is divided by two and equals B. $A - B = C$. The lesser of C or the maximum shelter amount set forth in RFT 255 will be deducted from the reduced income in determining the final net amount. The amount of food assistance allotment is established by regulations at 7 CFR 273.10 based on a group's net income.

The Administrative Law Judge found Claimant's testimony credible. Claimant indicated that she turned in all required verifications when she first applied for benefits and then resubmitted them later. Claimant further indicated that when she began working, she asked the Department to stop her FIP and she was told "to just keep receiving benefits until they ran out." Claimant testified that she turned in a shelter verification for \$550.00/month in rent. Claimant also testified that she was responsible for paying her utilities although they were not in her name. Neither shelter nor utility deductions were included in Claimant's FAP budget. BEM 554, p. 11 indicates that Claimant is entitled to a deduction for any utility costs for which Claimant has responsibility. There is nothing in the regulation that the utility must be in Claimant's name. Accordingly, the Administrative Law Judge finds that Claimant was entitled to a shelter and utility deduction in the FAP budget which will affect whether there was an overpayment and the amount of same.

According to the aforementioned policy on budgeting, Claimant's shelter costs equal $\$550 + \$550 = \$1100.00$ (A). 50% of the income less deductions = $\$690.50$ (B). $(A - \$1100) - (B - \$690.50) = \$409.50$. Claimant, therefore, has a net monthly income of $\$972$. This was obtained by subtracting the standard deduction of $\$132.00$ and the excess shelter amount of $\$409$ from the gross income of $\$1513.00$. A household of one person with a net monthly income of $\$972.00$ is entitled to a monthly FAP grant of $\$234.00$ per month. RFT 260.

The Department's recoupment action was based on Claimant receiving a FAP award of $\$0$ not $\$234.00$. Therefore, the recoupment amounts for FAP are incorrect. The Department did not provide budgets for FAP from June, 2009 through August, 2009. However, presuming that the shelter expenses were left out of those budgets as well and Claimant was underpaid on FAP, Claimant could very well be under the $\$500.00$ thresh-hold of over issuance.

Accordingly, the Department's FIP and FAP OI and recoupment actions are DENIED. The Department shall recalculate the Claimant's FAP budgets for June, July and August 2009 including shelter expenses of $\$1100.00$ to determine if there was an underpayment of FAP benefits. The Department shall then re-determine if there was an OI that warrants recoupment.

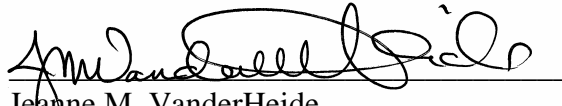
DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the Department improperly calculated the Claimant's FAP benefits from June, 2009 – October 2009 by not including shelter expenses reported by Claimant.

Accordingly, it is ORDERED:

1. The OI and recoupment for FIP and FAP benefits is DENIED.
2. The Department shall recalculate and reprocess the Claimant's FAP benefits from June, 2009 – October, 2009 to include a shelter and utility deduction of $\$1100$. The Department shall further supplement Claimant for any lost benefits she was otherwise entitled to receive.

3. The Department shall recalculate the overpayment for FAP benefits for September and October, 2008 utilizing the new budgets that include shelter and utility expenses per Claimant's testimony at hearing.
4. The Department shall use the new FAP budgets and the new overpayment recalculation both including shelter and utility expenses to determine if Claimant was overpaid for FAP and FIP and whether the amount of said overpayment warrants recoupment. If the recoupment amount is over \$500.00 given the new calculations, nothing in this Order shall prevent the Department from pursuing that recoupment.
5. Claimant has an obligation to provide verification for shelter and utility expenses; however, the failure to provide said verification will not affect the remainder of this Order.


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

Date Signed: 11/23/09

Date Mailed: 12/04/09

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

cc:

