

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.: 2010 37955
Issue No.: 3002, 3020
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
June 28, 2010
Oakland County DHS (03)

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 on June 28, 2010 from Detroit, Michigan. The Claimant appeared and testified. [REDACTED], FIM appeared on behalf of the Department.

ISSUE

Whether the Department properly calculated the Claimant's Food Assistance ("FAP") benefits for the time period 7/1/08 – 7/31/09 resulting in an overissuance and recoupment.

FINDINGS OF FACT

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

1. The Claimant was an active FAP recipient.
2. Claimant was receiving FAP benefits of \$347-\$459.00 during the subject time period of 7/1/08 – 7/31/09.

3. At redetermination on 6/30/10, the Department discovered that it had under budgeted Claimant's income by not including child support received and incorrectly budgeting Claimant's self-employment. (See Exhibit 1A and 4A-4C).
4. New budgets were compiled including the child support and self employment income received to determine that there was an over-issuance totaling \$2,035.00. (Exhibits 6A – 6FF, 9).
5. On February 3, 2010, the Department sent Claimant notice of the \$2,035 FAP over-issuance. (Exhibit 7).
6. Claimant testified that she has a household group of three (3) people.
7. The Claimant testified that she had gross self employment income in the amount of \$18,565.00 for 2008. (Exhibit 3).
8. The Claimant testified that she had a rent obligation of \$775.00 per month and is also responsible for payment of electric and phone utilities in the home.
9. Claimant objected to the FAP calculation, over-issuance and recoupment and filed this appeal. The Department received the Claimant's Request for Hearing on February 14, 2010.

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 Bridges Administrative Manual (“BAM”), the Bridges Eligibility Manual (“BEM”), and the Reference Tables (“RFT”).

The federal regulations define household income to include all earned and unearned 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. BEM 550. Under 7 CFR 273.9, as amended, \$125.00 is deducted from the gross income of FAP recipients in determining FAP grants. A non-categorically eligible Senior/Disabled/Veteran (SDV) FAP group must have income below the net income limits. BEM 550. The standard deductions are a set amount that is applied regardless of the actual expenses incurred by the Claimant.

An individual who runs their own business is self-employed. It is sometimes difficult to determine if an individual’s income should be entered in the earned income or self-employment. The Department is to make a determination based on available information using the following guidelines which are considered to be indicators of self-employment:

- The individual sets own work hours.
- The individual provides own tools used on the job.
- The individual is responsible for the service being provided and for the methods used to provide the service.
- The individual collects payment for the services provided from the individual paying for them.

A client need not meet all of the above to be considered self-employed. BEM 502, p. 2. Countable income from self-employment equals the total proceeds minus allowable expenses of producing the income. BEM 502, p.3. Allowable expenses are the higher of 25 percent of the total proceeds, or actual expenses if the client chooses to claim and verify the expenses. *Id.*

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.

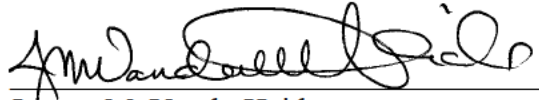
In the present case, the Department seeks recoupment of an over-issuance of FAP benefits due to the Department's failure to properly include Claimant's income and child support in the FAP budgets. An over-issuance ("OI") occurs when a client group receives more benefits than they are entitled to receive. BAM 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. BAMs 700, 705, 715, and 725. An agency error OI is caused by incorrect actions by DHS, DIT staff, or department processes. BAM 705, p. 1. In general, agency error OIs are not pursued if OI amount is under \$125.00 per program. BAM 705, pp. 1-3. If improper budgeting of income caused the OI, use actual income for the past OI month for that income source. BAM 705, p. 6.

Based on the evidence and testimony presented on the record, the Administrative Law Judge has personally checked the Department's FAP calculations according to the aforementioned policy on budgeting and does not find any error in the Department's FAP budgets. Accordingly, based on the findings of fact and rules of law above, the Department's FAP OI and recoupment actions are AFFIRMED.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the Department properly determined there was a Department error FAP over-issuance and the \$2,035.00 FAP recoupment is proper.

Accordingly, it is ORDERED that the Department's FAP OI and Recoupment for \$2,035.00 for the time period 7/1/08 – 7/31/09 is AFFIRMED.



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

Date Signed: 07/12/2010

Date Mailed: 07/12/2010

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 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/cjp

cc:

