

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.: 2010-12566
Issue No.: 4060
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: December 1, 2010
Calhoun County DHS

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon Ms. Williams' request for a hearing. After due notice, a telephone hearing was held on December 1, 2010. [REDACTED] (Respondent) appeared and testified. On behalf of Department of Human Services (DHS), [REDACTED] [REDACTED] Recoupment Specialist, appeared and testified.

ISSUE

Whether DHS properly established a sufficient basis for debt collection based on allegedly over-issued Family Independence Program (FIP) benefits.

FINDINGS OF FACT

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

1. Respondent was an ongoing FIP benefit recipient.
2. Respondent's FIP benefits were based on a group that included only Respondent.
3. On an unspecified date, Respondent lost her child(ren) due to neglect or abuse but there was a plan for the child(ren) to return to Respondent's home.
4. The basis for Respondent's FIP benefits was that she was a parent to children not in her household but there was a plan for the child(ren) to be returned to Respondent's household.

5. On 9/11/07, DHS received an email (Exhibit 2) which stated that Respondent's parental rights had been terminated and the goal to return the children to Respondent had changed over one year ago.
6. On 8/5/09, DHS mailed Respondent a Notice of Over-issuance (Exhibit 6) informing Respondent of \$2745 in over-issued FIP benefits from 12/2006-8/2007.
7. On 8/31/09, Respondent requested a hearing disputing the recoupment of over-issued FIP benefits.

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 (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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT). At the time of the alleged over-issuance of benefits, DHS policies were found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM).

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the over-issuance (OI). PAM 700 at 1. An OI is the amount of benefits issued to the client group in excess of what they were eligible to receive. *Id.* Recoupment is a DHS action to identify and recover a benefit OI. *Id.*

DHS may pursue an OI whether it is a client caused error or DHS error. *Id.* at 5. An over-issuance caused by DHS error is not pursued if the estimated OI amount is less than \$125 per program. PAM 705 at 1. If improper budgeting of income caused the OI, DHS is to use actual income for the past OI month for that income source. PAM 705 at 6.

All cases that contain an adult member from the original OI group and are active for the program in which the OI occurred are liable for the OI and subject to recoupment. PAM 725 at 3. OIs on inactive programs are recouped through cash repayment processes. *Id.* OI balances on inactive cases must be repaid by lump sum or monthly cash payments unless collection is suspended. *Id.* at 6.

DHS requests a "Debt Collection Hearing" when the grantee of an inactive program requests a hearing after receiving the DHS-4358B, Agency and Client Error Information

and Repayment Agreement. Though it is the client's hearing request which initiates the scheduling of an administrative hearing, the hearing is actually considered DHS requested as DHS is attempting to establish a basis for a debt collection. The hearing decision determines the existence and collectability of a debt to the agency. *Id.*

In the present case, DHS alleges that Respondent was over-issued FIP benefits totaling \$2745 from 12/2006-8/2007. DHS contends that Respondent initially was eligible for FIP benefits as a parent of a child who was removed from Respondent's home for abuse or neglect while there was a plan to return the child to Respondent's home. DHS contends that DHS learned on 9/11/07, via email, that there was no plan to return the child to Respondent's home for the previous year.

A FIP certified group may be composed of only adults under specified circumstances. BEM 210 at 10. One appropriate circumstance is when a group consists of legal parent(s) and/or stepparent of a dependent child in an out of home foster care placement due to abuse and/or neglect when there is a plan to return the child to the parent's home. *Id.* at 11. Eligibility based on this policy is allowed for up to one year. *Id.*

DHS did not establish a first-hand basis of Respondent's parental termination. DHS submitted only an email to Respondent's benefit specialist from Kristine Davis. The email was in response to Respondent's specialist's inquiry for information regarding the status of Respondent's parental rights. The undersigned has difficulty in accepting the email as reliable proof of termination of Respondent's parental rights.

The email is hearsay. The drafter of the email, [REDACTED] was not present for the hearing. It was also not established that [REDACTED] had first-hand knowledge of what Respondent's parental rights were. It is not known what [REDACTED]' job title is, who she works for or why Respondent's specialist asked her about Respondent's parental rights status.

DHS had better evidence on which to rely to establish Respondent's parental rights termination. DHS could have submitted court documents verifying the parental rights termination or presented testimony from a person with knowledge of Respondent's parental rights status. DHS was given additional time to submit more reliable evidence but failed to do so.

The email provided by DHS did not even have a specific date of the parental termination. It merely stated that the "goal was changed over a year ago to termination". Based on the evidence presented, the undersigned can only reasonably find that DHS failed to establish that Respondent was over-issued FIP benefits because insufficient evidence was presented regarding Respondent's loss of parental rights. Accordingly DHS may not pursue recoupment or debt collection against Respondent for the allegedly over-issued FIP benefits from 12/2006-8/2007.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS improperly sought recoupment and/or debt establishment against Respondent for \$2745 in over-issued FIP benefits. It is ordered that DHS may not pursue recoupment and/or collection actions for these benefits. The actions taken by DHS are REVERSED.

Christian Gardocki

Christian Gardocki
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: 12/14/2010

Date Mailed: 12/14/2010

NOTICE: The law provides that within 60 days from the mailing date of the above hearing Decision the Respondent 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.

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