

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.: 2010-23193
Issue No.: 3003/3020
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
June 10, 2010
Wayne County DHS (43)

ADMINISTRATIVE LAW JUDGE:

Colleen M. Mamelka

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 hearing was held in Detroit, Michigan on June 10, 2010. The Claimant appeared, along [REDACTED], and testified. The Claimant was represented by [REDACTED] and [REDACTED] of [REDACTED]. [REDACTED] and [REDACTED] appeared on behalf of the Department.

ISSUE

1. Whether the Department is entitled to recoup a \$153.00 FAP over-issuance for the period from October 2009 through December 2009 due to Agency error?
2. Whether the Department properly calculated the Claimant's Food Assistance ("FAP") budget at redetermination?

FINDINGS OF FACT

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

1. The Claimant is a FAP recipient.
2. Due to Agency error, the Department did not include the Claimant's son's correct earned income information when calculating the Claimant's FAP budget for the period from October 1, 2009 through December 31, 2009. (Exhibits 5, 7, 8)
3. As a result, the Claimant received a \$153.00 FAP overissuance for that period. (Exhibit 10)
4. On February 23, 2010, the Department sent a Notice of Overissuance under the FAP program for the period from October 1, 2009 through December 31, 2009. (Exhibit 9)
5. On this date, the Department recalculated the Claimant's FAP benefits. (Exhibit 5)
6. The Claimant's group size is 2.
7. The Claimant receives \$1,274.00 in Retirement, Survivors, Disability Insurance ("RSDI") income. (Exhibit 2)
8. The Claimant's son has income from employment. (Exhibit 3)
9. The Claimant is required to pay \$825.00/month for shelter and is responsible for utilities. (Exhibits 4, 5)
10. The Department calculated the Claimant's monthly FAP allotment as \$67.00/month which was reduced to \$57.00 due to the overissuance recoupment. (Exhibit 1)
11. On February 19, 2010, the Department received the Claimant's written request for hearing protesting the FAP overissuance recoupment and the reduction in the monthly FAP allotment. (Exhibit 11)

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”), formerly 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 Bridges Reference Manual (“BRM”).

An over-issuance (“OI”) occurs when a client group receives more benefits than they are entitled to receive. BAM 700 A claim is the resulting debt created by the overissuance of benefits. BAM 700 Recoupment is an action to identify and recover a benefit OI. BAM 700 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 In general, agency error OIs are not pursued if the OI amount is under \$125.00 per program. BAM 705

Group composition is the determination of which persons living together are included in the FAP program group. BEM 212 For FAP purposes, all expenses are converted to a nonfluctuating monthly amount. BEM 554 All countable earned and unearned income available to the client must be considered in determining the Claimant’s eligibility for program benefits. BEM 500 The Department must consider the gross benefit amount before any deduction, unless Department policy states otherwise. BEM 500 A group’s monthly benefits are based in part, on a prospective income determination. BEM 505 A standard monthly amount must be determined

for each income source used in the budget. BEM 505 Weekly benefit amounts are converted to a monthly amount by multiplying the weekly amount by 4.3. BEM 505 Bi-weekly amounts are converted by multiplying the amount by 2.15. BEM 505

Shelter expense is an allowable FAP expense. BEM 554 Housing expenses include rent, mortgage, a second mortgage, home equity loan, required condo or maintenance fees, lot rental or other payments including interest leading to ownership of the shelter occupied by the FAP group. BEM 554 In determining a FAP allotment, a Heat and Utility Standard is used whenever a FAP group contributes to the heat expense separate from rent, mortgage, or condominium/maintenance payments. BEM 554 Clients are not eligible for the Heat and Utility Standard when heat is included in the rent payment unless the client is billed for excess heat payments from the landlord, or the client reports that they have received, applied for or will be applying for a Home Heating Credit warrant in the current fiscal year (October through September) for their current address. BEM 554.

The Claimant's request for hearing protested both the recoupment of the FAP overissuance as well as the FAP reduction in benefits. Each issue will be addressed separately.

FAP Overissuance

In this case, the Department seeks recoupment of an over-issuance of FAP benefits due to the Department's failure to include the correct amount of the Claimant's son's earned income. In the record presented, the Claimant informed the Department of a group member's employment. Due to Agency error, the son's earned income was not properly budgeted. Upon discovery, the Department recalculated the Claimant's FAP allotment for the months of October 2009 through December 2009. As a result, the Department determined that the Claimant received a \$153.00 FAP overissuance which it is entitled to recoup because the amount is over \$125.00. The Department properly notified the Claimant of the overissuance as required by policy.

Ultimately, the Department established it acted in accordance with department policy when it pursued the FAP overissuance for the period from October 2009 through December 2009.

Accordingly, the Department's actions are AFFIRMED.

FAP Calculation

In the record presented, the Claimant disagreed the amount of earned income budgeted for her son when calculating the FAP allotment. Upon review, the Department established if followed department policy when calculating the Claimant's FAP allotment by including the correct group size, correct unearned and earned income (prospectively budgeted), shelter expense, and utility standard. The Claimant asserted she had additional medical expenses that were not included but acknowledged that these expenses were not submitted at the time of the redetermination. Ultimately, the Department established it acted in accordance with department policy when it reduced the Claimant's FAP allotment at redetermination. Accordingly, the Department's determination is AFFIRMED.

DECISION AND ORDER

The Administrative Law Judge, based upon findings of fact and conclusions of law, finds that the Department's FAP over-issuance determination and FAP calculation are upheld.

Accordingly, it is ORDERED:

1. The Department's determination of a \$153.00 FAP over-issuance due to Agency error for the period from October 2009 through December 2009 is AFFIRMED.

2. The Department's determination of the Claimant's FAP allotment effective March 1, 2010 is AFFIRMED.

Colleen M. Mamelka

Colleen M. Mamelka
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 6/16/2010

Date Mailed: 6/16/2010

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.

CMM/jlg

cc:

