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.: 201036784
Issue No.: 3020
Case No.: [redacted]
Load No.: [redacted]
Hearing Date: July 12, 2010
Oakland County DHS (02)

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 telephone hearing was held on Monday, July 12, 2010. The Claimant appeared and testified. The Claimant was represented by [redacted] of [redacted]. [redacted] and [redacted] appeared on behalf of the Department.

ISSUE

Whether the Department is entitled to recoup a $911.00 FAP over-issuance for the period from August 2009 through April 2010 due to the Department's failure to include the Claimant's unearned income?

FINDINGS OF FACT

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

1. The Claimant is a FAP recipient.

2. For the period from August 2009 through April 2010, the Claimant's FAP allotment was budgeted at $161.00/month. (Exhibit 1, pp. 5, 6)

3. During the relevant period (August 2009 through April 2010), the Claimant received $641.00/month in Retirement, Survivor's, Disability Insurance ("RSDI") income. (Exhibit 1, pp. 11 – 13)

4. The Claimant's group size is one.

5. The Claimant does not have a shelter obligation but is responsible for utilities and property taxes.

6. The Claimant's Part B Medicare premium is $96.50/month. (Exhibit 1, pp. 11)

7. During the mid-year certification, the Department discovered that, due to Agency error, the Claimant's RSDI income was not previously budgeted.

8. As a result, the Department determined that the correct monthly FAP allotment should have been $34.00. (Exhibit 1, pp. 7, 8)

9. On May 19, 2010, the Department issued a $911.00 Notice of Over-issuance to the Claimant. (Exhibit 2)

10. On May 17, 2010, the Department received the Claimant's timely written request for hearing. (Exhibit 3)

CONCLUSIONS OF LAW

The Food Assistance Program ("FAP") (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 (formerly known as the Family Independence Agency) administers the FAP program pursuant to MCL 400.10 *et seq*., and MAC R 400.3001-3015. Department policies are found in the Bridges Administrative Manual ("BAM"), the Bridges Eligibility Manual ("BEM"), and the Bridges Reference Manual ("BRM").

In this case, the Department seeks recoupment of an over-issuance of FAP benefits due to the Department's failure to include reported unearned income. 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 over-issuance 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 OI amount is under $125.00 per program. BEM 705

In the record presented, the Department failed to budget the Claimant's RSDI income for the period from August 2009 through April 2010. As a result, the Claimant received an over-issuance of FAP benefits. During the hearing and upon further review, the

Department acknowledged that it failed to take into account the Claimant's Medicare Part B premium and property taxes. As a result, the Department agreed to recalculate the Claimant's FAP allotment for the period from August 2009 through April 2010 to determine the correct over-issuance amount. Ultimately, the Claimant likely received a FAP over-issuance due to Department error however the exact amount of the over-issuance is not known. Accordingly, the Department's $911.00 FAP over-issuance is not upheld.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds that the Department's $911.00 FAP over-issuance is not upheld.

Accordingly, it is ordered:

1. The Department's determination of a $911.00 FAP over-issuance due to Agency error is REVERSED.

2. The Department shall recalculate the Claimant's FAP budgets for the period from August 2009 through April 2010 and notify the Claimant and her authorized representative of the determination in accordance with department policy.

3. If the recalculated FAP over-issuance is less than $125.00, the Claimant shall not be required to reimburse the Department pursuant to BAM 705.

4. If the recalculated FAP over-issuance is $125.00 or more, the Department shall recoup the over-issuance.

Colleen M. Mamelka

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

Date Signed: 07/13/2010

Date Mailed: 07/13/2010

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 of the rehearing decision.

CMM/jlg

cc: [redacted]