

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: 2010-38869
Issue No: 3052
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 13, 2010
Genesee County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne L. Keegstra

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on July 13, 2010. The claimant did personally appear and provide testimony.

ISSUE

Did the claimant receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the department is entitled to recoup?

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 applied for FAP benefits on March 4, 2009. (Department Exhibit 1-16)

2. The department indicates that the claimant's mortgage expense was budgeted incorrectly. The department worker indicates that he added the property taxes and insurance to the mortgage payment, when it was already included in the mortgage payment amount.

3. The department worker indicated that he noticed the error at redetermination in February, 2010. (Department Exhibit 59 – 62)

4. The department worker indicated that he corrected the error back to the application date and the claimant was issued a Notice of Overissuance. The Notice of Overissuance that the department provided showed an overissuance for the month of January, 2010 in the amount of \$366. (Department Exhibit 17 – 21)

5. The claimant submitted a hearing request on March 12, 2010.

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 (DHS or department) administers the FAP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3001-3015. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Department policy states:

BENEFIT OVERISSUANCES

DEPARTMENT POLICY

All Programs

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the overissuance (OI).

This item explains OI types and standard of promptness. PAM, Item 700, p. 1.

Definitions

The **Automated Recoupment System (ARS)** is part of CIMS that tracks all FIP, SDA and FAP OIs and payments, issues automated collection notices and triggers automated benefit reductions for action programs.

Overissuance Type identifies the cause of an overissuance.

Recoupment is a DHS action to identify and recover a benefit overissuance. PAM 700, p. 1.

PREVENTION OF OVERISSUANCES

All Programs

DHS must inform clients of their reporting responsibilities and act on the information reported within the standard of promptness. PAM 700, p. 2.

During eligibility determination and while the case is active, clients are repeatedly reminded of reporting responsibilities, including:

- . Acknowledgments on the application forms, **and**
- . Explanation at application/redetermination interviews, **and**
- . Client notices and program pamphlets.

DHS must prevent OIs by following PAM 105 requirements and by informing the client or authorized representative of the following:

- . Applicants and recipients are required by law to give complete and accurate information about their circumstances.
- . Applicants and recipients are required by law to promptly notify DHS of any changes in circumstances within 10 days.

- . Incorrect, late reported or omitted information causing an OI can result in cash repayment or benefit reduction.
- . A timely hearing request can delete a proposed benefit reduction. The client must repay the OI if:
 - .. the hearing request is later withdrawn, **or**
 - .. the State Office of Administrative Hearings and Rules (SOAHR) denies the hearing request, **or**
 - .. the client or administrative hearing representative fails to appear for the hearing and SOAHR gives DHS written instructions to proceed, **or**
 - .. the hearing decision upholds the department's actions.

See PAM 600

Record on the application the client's comments and/or questions about the above responsibilities. PAM 700, p. 2.

OVERISSUANCE TYPES

Department Error

All Programs

A department error OI is caused by incorrect action (including delayed or no action) by DHS staff or department processes. Some examples are:

- . Available information was not used or was used incorrectly
- . Policy was misapplied
- . Action by local or central office staff was delayed
- . Computer or machine errors occurred
- . Information was not shared between department divisions (services staff, Work First agencies, etc.)
- . Data exchange reports were not acted upon timely (Wage Match, New Hires, BENDEX, etc.)

If unable to identify the type of OI, record it as a department error.

FIP, SDA, CDC, and FAP

Department error OIs are not pursued if the estimated OI amount is less than \$125 per program.

Exception: There is no threshold limit on CDC **system** errors. RRS in central office will recoup these types of overissuances.

FIP, SDA and FAP Only

Note: The agency error threshold was lowered to \$125 for all programs with a retroactive effective date of August 1, 2008. All agency errors with an overissuance of \$125 or more will be recouped.

FIP and SDA Only

Treat an OI due to excess assets as a department error **unless** IPV caused it.

CDC Only

CDC department errors and CDC provider department errors must be pursued beginning October 1, 2006. If the CDC department error OI period included the month of October 2006, include the months previous to October 2006 when determining the OI amount.

Note: Department errors will be assigned to the provider or the client depending on the type of department error that occurred. See PAM 705 for examples.

MA, SER and ESS Only

Recoupment of department error OIs are not pursued. PAM 700, pp. 3-4.

Client Error

All Programs

A **client error** OI occurs when the client received more benefits than they were entitled to because the client gave incorrect or incomplete information to the department.

A client error also exists when the client's timely request for a hearing results in deletion of a DHS action, **and**

- . The hearing request is later withdrawn, **or**
- . SOAHR denies the hearing request, **or**
- . The client or administrative hearing representative fails to appear for the hearing and SOAHR gives DHS written instructions to proceed, **or**
- . The hearing decision upholds the department's actions. See PAM 600. PAM Item 700, p. 5.

OVERISSUANCE THRESHOLD

FIP, SDS, CDC and FAP Only

Department error OIs are not pursued if the estimated OI amount is less than \$125 per program.

Client error OIs are not established if the OI amount is less than \$125, unless:

- . the client or provider is active for the OI program, or
- . the OI is a result of a Quality Control (QC) audit finding. PAM 700, p. 7.

In this case, the department appears to have made an error at the time of application and included the mortgage insurance and taxes twice in the mortgage amount allowed. The department worker testified that he did not notice the amount of taxes and insurance was already included in the mortgage payments and added them in a second time to the claimant's mortgage expense. The department worker testified that the claimant received an OI due to this agency error.

The Notice of Overissuance mailed to the claimant indicates that the OI period is the month of January, 2010 and that OI amount is \$366. However, during the hearing, the department worker indicated that this is not correct as the claimant was overissued benefits since the time of application, March, 2009. However, the department had no information on the actual OI period or what the OI amount should be. When this Administrative Law Judge explained that the department must prove the OI amount that they department claims they are eligible to recoup from the claimant, the department worker indicated that he could not do so.

Thus, the department has failed to provide any evidence to show what the OI amount is, or even that one actually occurred. The department has failed to meet their burden in this case and the department's actions must be reversed.

It is noted that the department has already begun recoupment on this case. The department must stop the recoupment and issue any monies collected from the claimant back to her.

The department was informed that if this case was reviewed and the claimant is properly determined to have received an OI, the department could refile the case with the proper evidence to establish the OI. The claimant was informed that if the department did so, she could again request a hearing on the action if she disagreed with the department's decision.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department improperly determined the claimant received an overissuance (OI) of Food Assistance Program (FAP) benefits that the department is entitled to recoup.

Accordingly, the department's decision is REVERSED. The department shall:

1. Stop any recoupment action currently in progress on this case.
2. Issue the claimant any monies already collected back to her.

SO ORDERED.

/s/ _____
Suzanne L. Keegstra
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: July 15, 2010

Date Mailed: July 19, 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.

SLK 

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