

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.: 201041860  
Issue No.: 3052  
Case No.: [REDACTED]  
Load No.: [REDACTED]  
Hearing Date: August 2, 2010  
Oakland County DHS (04)

**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 the claimant's request for a hearing. After due notice, a telephone hearing was held on August 2, 2010. The claimant appeared and testified; [REDACTED] also appeared and testified on behalf of Claimant. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, appeared and testified.

**ISSUE**

Whether DHS properly sought recoupment of \$367 in Food Assistance Program (FAP) benefits issued to Claimant in 4/2010.

**FINDINGS OF FACT**

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

1. Claimant was an ongoing FAP recipient receiving \$367/month in FAP benefits.
2. Claimant submitted a State Emergency Relief application to DHS on 3/22/10; the application indicated that Claimant's 23 year old son lived with her and was employed.
3. DHS was not previously aware that Claimant's son was employed and calculated Claimant's FAP benefit amount without including any income from Claimant's child.

4. DHS mailed Claimant a Verification Checklist (DHS-3503) (Exhibit C) on 3/26/10 requesting verification of her son's employment income.
5. Claimant failed to return the income verification by the due date of 4/5/10.
6. DHS terminated Claimant's FAP benefits in 4/2010 due to Claimant's failure to timely verify her son's employment income.
7. Claimant subsequently submitted an Employment Verification (DHS-38) (Exhibit E) regarding her son's income after her FAP benefits closed.
8. Claimant received \$367 in FAP benefits in 4/2010; the FAP benefit calculation did not include Claimant's son's income.
9. On an unspecified date, DHS sought recoupment of Claimant's 4/2010 FAP benefit issuance.
10. Claimant submitted a hearing request on 6/4/10 disputing only the attempted FAP benefit recoupment of \$367, not the closure of her FAP benefits.

### **CONCLUSIONS OF LAW**

The Food Assistance Program (formerly known as the Food Stamp 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 Reference Tables Manual (RFT).

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the over-issuance (OI). BAM 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. BAM 705 at 1. If improper budgeting of income caused the OI, use actual income for the past OI month for that income source. BAM 705 at 6.

In the present case, it was not disputed that DHS did not budget previously unreported employment income for Claimant's son and as a result, Claimant was issued an incorrect amount of FAP benefits. DHS labeled the error as an agency error but testified that the error was truly client caused by Claimant. In reality, the distinction

does not matter as over-issuances exceeding \$125 may be recouped whether they are caused by agency-error or client-error.

DHS did not attempt to seek recoupment from the start date of Claimant's son's employment. DHS only sought to recoup the FAP benefits from 4/2010 that Claimant received.

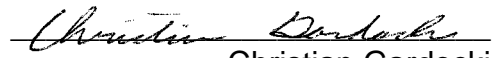
DHS contended that the entire amount of 4/2010 FAP benefits may be recouped because Claimant failed to meet the deadline in verifying her son's income. The undersigned is not persuaded by this argument. If the issue was whether DHS properly terminated Claimant's FAP benefits, then the DHS action of terminating Claimant's FAP benefits would likely be upheld. The issue of this case involves recoupment.

There is no policy which supports recouping an entire month of FAP benefits without first calculating the amount of FAP benefits which should have been issued. Thus, the proper OI amount would have been the amount of FAP benefits received (\$367) minus the amount of FAP benefits Claimant would have received had her son's employment income been budgeted. DHS made no such calculation; thus, the proper OI amount is not known. Without the proper OI amount, the recoupment decision cannot be upheld

#### **DECISION AND ORDER**

The actions taken by DHS are REVERSED. The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS improperly sought recoupment in \$376 of FAP benefits from Claimant. It is ordered that DHS cease any further recoupment of the \$376 and to supplement Claimant for any portion of the \$376 in FAP benefits that has already been recouped.

/s/

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

Date Signed: August 13, 2010

Date Mailed: August 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 date of the rehearing decision.

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