

STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg No. 201043049  
Issue No. 3052  
Case No. 1 [REDACTED]  
Load No. 8 [REDACTED]  
Hearing Date: September 8, 2010  
Van Buren County DHS

**ADMINISTRATIVE LAW JUDGE:** Jana A. Bachman

**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, An in-person hearing was held on September 8, 2010.

**ISSUE**

Whether the Department of Human Services (department) acted in compliance with department policy when it determined claimant's eligibility for Food Assistance Program (FAP) 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. During July 2009 through February 2010, claimant was a recipient of FAP. She received monthly benefits of \$688.00. Department Exhibit a, pg 2C..
2. On or about March 2010, the department discovered that an error had been made when determining claimant's FAP benefits. Child support income was not included. After corrections were completed, the department determined claimant was entitled to [REDACTED] per month (increased to [REDACTED] per month due to automatic update effective October 1, 2010. Claimant was overpaid a total of [REDACTED] 0 in FAP. Department A, pgs 15-15E 2C.

## 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).

When determining eligibility for FAP, all income must be included unless it is specifically excluded. Child support income is not excluded and must be counted when determining FAP eligibility. The FAP program provides for a deduction from earned income of 20% and a deduction for the cost of child care when necessary to enable a FAP household member to work. A standard deduction from income of [REDACTED] is allowed for each household. Certain non-reimbursable medical expenses above [REDACTED] per month may be deducted for senior/disabled/veteran group members. Another deduction is provided if monthly shelter costs are in excess of 50% of the household's income after all the other deductions have been allowed, up to a maximum of [REDACTED] for non-senior/disabled/veteran households. Bridges Eligibility Manual (BEM) 500, 550, 554; Program Reference Table (PRT) 255; 7 CFR 273.2.

Agency error OIs are not pursued if the estimated OI amount is less than [REDACTED] per program.

The amount of the OI is the benefit amount the group actually received minus the amount the group was eligible to receive.

If improper budgeting of income caused the OI, use actual income for the past OI month for that income source.

Bridges Administrative Manual (BAM) 705; 7 CFR 272.8; 7 USC 2022

In this case, the department did not include income as required by department policy when determining claimant's FAP benefit. However, recoupment policy indicates that the actual income is to be used when a budgeting error has caused an agency error overissuance of benefits. According to the department's records, claimant received varying amounts of child support during the months at issue (Department Exhibit A, pgs 4-4E). It appears that the department used the same income each month when determining the amount of the overissuance. Thus, it is clear that an overissuance has occurred; but the department has not met its burden of proof that the amount of overissuance is correctly calculated. Accordingly, the department's action for recoupment can not be upheld. Finding of Fact 1-2.

**DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department of Human Services did not act in compliance with department policy when it determined the amount of claimant's Food Assistance Program benefit overissuance.

Accordingly, the department's action is, hereby, REVERSED. The department is to initiate a determination of claimant's FAP overissuance for July 2009 through February 2010 in compliance with department policy and this decision and order.

\_\_\_\_\_  
/s/  
Jana A. Bachman  
Administrative Law Judge  
for Duane Berger, Acting Director  
Department of Human Services

Date Signed: February 9, 2011

Date Mailed: February 9, 2011

**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.

JAB/db

cc:

[REDACTED]