

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.: 201043264
Issue No.: 3052
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: August 12, 2010
Wayne County DHS (15)

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 12, 2010. The claimant appeared and testified. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, and [REDACTED], Manager, appeared and testified.

ISSUE

Whether DHS properly sought to recoup \$184 in over-issued FAP benefits from Claimant.

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 DHS recipient receiving \$200/month in FAP benefits.
2. Claimant's benefit period was scheduled for a semi-annual contact redetermination by the end of 3/2010.
3. In 2/2010, DHS mailed Claimant a Semi-Annual Contact Review (DHS-1046) which also requested Claimant's income verifications to be submitted by 3/1/10.
4. Claimant submitted the DHS-1046 and employment income verifications prior to 3/1/10.

5. Claimant's income verifications verified the following gross income for Claimant: \$846.66 on 1/15/10 and \$550.49 on 1/29/10.
6. DHS redetermined Claimant's FAP benefits based on the new income verification and reduced Claimant's FAP benefits from \$200/month in 3/2010 to \$16/month beginning 4/2010.
7. On 4/1/10, DHS mailed Claimant a Notice of Over-Issuance (Exhibit 2) which stated that Claimant was over-issued \$184 in FAP benefits in 3/2010 due to Agency error and that DHS would seek to recoup the benefits.
8. Claimant requested a hearing on 4/16/10 disputing the recoupment of the \$184 in FAP benefits.

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 CML 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).

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 caused by the client or the agency. *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.

Claimant's primary contention is that DHS should not recoup over-issued FAP benefits caused by DHS error. Though Claimant's argument may be morally correct, the undersigned is bound by DHS policy in the analysis of whether to affirm or reverse DHS action. DHS policy clearly allows recoupment of over-issued FAP benefits even when the over-issuance is completely the fault of DHS if the over-issuance exceeds \$125. It is found that DHS was authorized to recoup over-issued FAP benefits even though they were responsible for causing the over-issuance.

The semi-annual mid-certification contact must be completed and EDBC results certified in Bridges by the last day of the sixth month of the benefit period to effect benefits no later than the seventh month. The contact is met by receipt of a completed DHS-1046 and required verifications. BAM 210 at 7. The testimony indicated that DHS timely performed this task and Claimant's FAP benefits were affected for the seventh month of the benefit period (4/2010). Since there was no DHS error involved, this may not be a basis for recoupment.

FAP groups with countable earnings are assigned to the simplified reporting (SR) category. This reporting option increases FAP participation by employed households and provides workload relief. BAM 200 at 1. Simplified reporting groups are required to report only when the group's actual gross monthly income (not converted) exceeds the SR income limit for their group size. No other change reporting is required. *Id.*

Clients have until the 10th of the following month to report employment income increases which take the client over the simplified reporting limit. BAM 200 at 1. For income increases that result in a benefit decrease, DHS action must be taken and notice issued to the client within the Standard of Promptness (FAP - 10 calendar days). The effective month is the first full month that begins after the negative action effective date.

Claimant received two biweekly pays in 1/2010 which total \$1397.15. The simplified reporting limit for a one-person FAP group is \$1174/month. RFT 250. Claimant's 1/2010 employment earnings (\$1397.15) exceeded the simplified reporting limit (\$1174).

No evidence was submitted regarding what the DHS error was. It is possible that Claimant submitted his 1/2010 income verifications in early 2/2010. If that was the case, the DHS error might have been waiting more than 10 days to process the change. In such a case, the DHS delay could have changed the effective month of FAP benefit reduction to occur in 4/2010 whereas meeting the standard of promptness for processing changes would have caused the FAP benefit reduction to occur in 3/2010. However, the undersigned cannot assume this scenario without supporting proof.

The undersigned can make conclusions based on known facts and apply assumptions favorably to Claimant since the burden of proof is on DHS to establish the correctness of their actions. First, it is known that under simplified reporting, Claimant had until 2/1/10 to report that his 1/2010 income exceeded the simplified reporting limit. It is known that the error was agency caused, not Claimant caused, so Claimant must have reported his income by 2/10/10. Interpreting the date favorably to Claimant would allow a 2/10/10 reporting date.

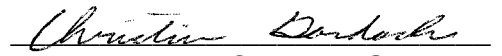
DHS had ten days to process the change. Thus, 2/20/10 would have been the latest date DHS could have processed the income change and done so timely. Using that

date as the date of processing the change, the negative action date would have occurred in 3/2010 and the effective month for the FAP benefit reduction would have been 4/2010. In this scenario, Claimant and DHS committed no error and per policy, Claimant was entitled to 3/2010 FAP benefits at the rate he had been receiving them. Without any evidence to the contrary, it is found that Claimant and DHS made no error in the processing of Claimant's Semi-Annual Contact Report; as there was no error, Claimant was not over-issued FAP benefits. DHS may not recoup properly issued FAP benefits.

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 Claimant was not over-issued FAP benefits and that DHS improperly sought recoupment of those benefits. It is ordered that DHS stop further recoupment actions on the \$184 in FAP benefits and to supplement Claimant for any part of the FAP benefits previously recouped.

/s/


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

Date Signed: August 20, 2010

Date Mailed: August 20, 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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