

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARINGS SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No. 2010-44093
Issue No. 3052
Case No. [REDACTED]
Hearing Date: June 22, 2011
Wayne County DHS (17)

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 June 22, 2011 from Detroit, Michigan. The Claimant appeared and testified.

ISSUE

Whether DHS established a basis to pursue debt collection actions against Respondent for \$772 in allegedly over-issued Food Assistance Program (FAP) benefits.

FINDINGS OF FACT

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

1. On 5/1/07, Claimant applied for FAP benefits.
2. Claimant was part of a FAP benefit group that included, at least, himself and his daughter.
3. In a letter dated 6/8/07, Claimant was informed that he would be eligible for Social Security Administration (SSA) benefits and would receive his first payment of \$1,757 around 7/18/07.
4. In a letter dated 6/8/07, Claimant was informed that his daughter would be eligible for SSA benefits and that she would receive a payment of \$6,112 around 6/14/07 and a next payment of \$878 on or about the third Wednesday of 7/2007.

5. On an unspecified date, Claimant reported to DHS the eligibility for SSA benefits for himself and his daughter.
6. DHS failed to budget any SSA income for Claimant's household in 8/2011.
7. DHS began budgeting Claimant's and his daughter's SSA income effective 9/2007.
8. On 3/31/10, DHS mailed Respondent a Notice of Overissuance (Exhibits 25-28) informing Respondent of the intent to pursue debt collection actions concerning \$772 in allegedly over-issued FAP benefits.
9. The \$772 was calculated based on an alleged overissuance of FAP benefits as follows: \$127 for 6/2007, \$127 for 7/2007 and \$518 for 8/2007.
10. On 4/8/10, Respondent requested a hearing to dispute the debt collection actions.
11. DHS has since reduced the alleged overissuance to \$518.

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). DHS administers the FAP pursuant to Michigan Compiled Laws 400.10, *et seq.*, and Michigan Administrative Code R 400.3001-3015. DHS regulations are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RTM).

Concerning whether an overissuance of FAP benefits occurred, the undersigned will refer to the DHS regulations in effect as of 8/2007, the month of the alleged overissuance. Concerning recoupment procedures, the undersigned will refer to the DHS regulations in effect as of 4/2010, the month of the DHS decision which Claimant is disputing. Current DHS manuals may be found online at the following URL: <http://www.mfia.state.mi.us/olmweb/ex/html/>.

DHS requests a "Debt Collection Hearing" when the grantee of an inactive program requests a hearing after receiving the DHS-4358B, Agency and Client Error Information and Repayment Agreement. BAM 725 at 13. Active recipients are afforded their hearing rights automatically, but DHS must request hearings when the program is inactive. *Id.* Though the client must request a hearing to trigger a "Debt Collection

Hearing”, the hearing is considered to be DHS requested. The hearing decision determines the existence and collectability of a debt to DHS.

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. Client and Agency error OIs are not pursued if the estimated OI amount is less than \$125 per program. BAM 700 at 7. If improper budgeting of income caused the OI, DHS is to recalculate the benefits using actual income for the past OI month for that income source. BAM 705 at 6.

DHS is to request a debt collection hearing only when there is enough evidence to prove the existence and the outstanding balance of the selected OIs. *Id.* at 15. Existence of an OI is shown by:

- A signed repay agreement, or
- A hearing decision that establishes the OI, or
- If a repay, court/hearing decision cannot be located: copies of the budgets used to calculate the OI, copies of the evidence used to establish the OI, and copies of the client notice explaining the OI. BAM 725 at 15.

OI balances on inactive cases must be repaid by lump sum or monthly cash payments unless collection is suspended. *Id.* at 6. Other debt collection methods allowed by DHS regulations include: cash payments by clients, expunged FAP benefits, State of Michigan tax refunds and lottery winnings, federal salaries, federal benefits and federal tax refunds. *Id.* at 7.

In the present case, DHS originally alleged an overissuance of \$772. Based on Claimant’s SSA award letters which verified Claimant and his daughter began receiving regular monthly payments in 7/2007, DHS reduced the alleged overissuance to \$518. It must be first determined whether there was an overissuance.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. PAM 105 at 7. Changes must be reported within 10 days after the client is aware of them or the start date of employment. *Id.* For income increases that result in a benefit decrease, action must be taken and notice issued to the client within the Standard of Promptness (FAP - 10 calendar days, FIP/SDA - 15 workdays). PEM 505 at 10.

Based on the 6/8/07 SSA letter date, Claimant would have known of the change on or shortly after 6/8/07; the undersigned will select a date of 6/10/07 which would allow for two days of mailing of the letter before Claimant was aware of the income. Adding 10 days to 6/10/07 would give Claimant until 6/20/07 to report the change to DHS. Adding 10 days to 6/20/07 would give DHS until 6/30/07 to take action on the change.

A timely notice is mailed at least 11 days before the intended negative action takes effect. PAM 220 at 4. Adding 11 days to 6/30/11 would give until 7/11/07 before the action took effect. Based on a 7/2007 effective date, the income would have affected Claimant's FAP benefits for 8/2007. Accordingly, there is a potential over-issuance of FAP benefits for 8/2007 because the SSA income was not budgeted for 8/2007.

DHS initially contended the error was a client error based on Claimant's failure to report the income within an Assistance Application dated 5/1/07, however, as Claimant established that there was no SSA income to report as of 5/2007, DHS had no evidence to establish that Claimant failed to report the income. Thus, the error will be considered agency error. However, whether the over-issuance was a client error or agency error is irrelevant. Either error may be recouped if the amount exceeds \$500.

DHS established through an 8/2007 FAP budgets (Exhibits 22-23) that Respondent was over-issued FAP benefits totaling \$518 for the month of 8/2007. It is found that DHS established an over-issuance of \$518 in FAP benefits and may pursue debt collection actions accordingly.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS did properly sought to pursue debt collection of FAP benefits against Respondent for the period of 6/2007-7/2007. The actions taken by DHS are PARTIALLY REVERSED.

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS established that Respondent received \$518 in over-issued FAP benefits for 8/2007. It is further found that DHS may pursue debt collection actions against Respondent to recoup the over-issued benefits. The actions taken by DHS are PARTIALLY AFFIRMED.



Christian Gardocki
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: July 6, 2011

2010-44093/CG

Date Mailed: July 6, 2011

NOTICE: The law provides that within 30 days of receipt of the above Decision and Order, the respondent may appeal it to the circuit court for the county in which he/she lives.

CG/cl

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