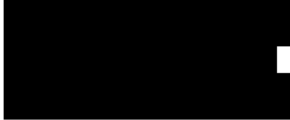


STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No.: 2010-45395
Issue No.: 3020/5013
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: August 26, 2010
Wayne County DHS (17)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 26, 2010. The Claimant and her husband appeared and testified at the hearing. [REDACTED], ES appeared on behalf of the Department.

ISSUE

1. Whether the Department is entitled to a recoupment for an overissuance to Claimant's FAP benefits in the amounts of \$1015 and \$269?
2. Whether the Department properly denied the Claimant's request for SER burial services?

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 active recipient of food assistance benefits (FAP) and applied for same October 2, 2009.
- 2) The department sought to establish an over issuance of FAP benefits which occurred as a result of Agency Error due to the Departments failure to properly enter the claimant's FAP group size in the bridges system and failure to adjust the claimant's FAP budget after she timely reported a change in the FAP group income due to receiving unemployment compensation benefits.

- 3) The department did not act in a timely manner in making its changes to the claimant's FAP budget and admits that the over issuances were due to the Agency Error.
- 4) The department submitted with its hearing summary over issuance summaries contained in two separate notices of over Issuance. The department did not provide any details to establish the basis for the monthly totals shown on the over issuance summary. No FAP budgets were submitted as evidence of benefits received by the Claimant and actual benefits the claimant should have received, nor was the person who prepared the over issuance summary present at the hearing. Exhibits 2 and 3.
- 5) The department alleged an over issuance of \$1015 due to agency error for the FAP program for two reasons, the Department entered the wrong group number, 3 instead of 2 group members, and the Department failed to enter reported income received due to unemployment benefits.
- 6) A further over issuance in the amount of \$269 for FAP benefits was also sought due to agency error. Exhibits 2 and 3.
- 7) Based upon the proofs and evidence submitted at the hearing the department did not establish the basis for the amounts of the over issuance it sought to recover.
- 8) The claimant also applied for state emergency relief (SER) for cremation of her stillborn child [REDACTED]. The claimant filed the SER application December 21, 2009.
- 9) The application was not registered by the department until January 12, 2010. The Department did not know why the Claimant's application was denied.
- 10) The Department did not know why the registration of the SER application took so long.
- 11) The claimant requested a hearing on April 12, 2010 protesting the department's request for and over issuance for FAP benefits and its denial of the SER application for cremation of her infant son. The department received the hearing request April 14, 2010. Claimant Exhibit 1.

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).

In this case, the Department seeks recoupment of an over-issuance of FAP benefits in the amount of \$1015 and \$269 due to the Claimant's income not being included in the Claimant's FAP budget and the incorrect entry by the Department of the Claimant's FAP group size. The Budget as prepared by the Department was in error and caused the over issuance because the changes which were timely submitted by the Claimant were not timely entered by the department as set forth above.

At the hearing, the Department did not provide any evidence to establish and to support the amount of and the basis for the over issuance amount. In order to recover, the Department must establish the over issuance and consequently its right to recoupment. The Department only provided a summary and did not provide the benefits the Claimant received versus the amount of benefits the Claimant was entitled to receive. The best evidence to establish the over issuance amount is from the actual FAP budgets which demonstrate the correct FAP benefits based on the before budget (amount the Claimant was paid) and after the changes were made to account for wrong group size and inclusion of unemployment benefits (budget correcting the agency errors). Under BAM 720 the amount of the over issuance is the amount of benefits the group actually received minus the amount the group was eligible to receive. The Department did not present this information.

An over-issuance ("OI") occurs when a client group receives more benefits than they are entitled to receive. BAM 700, p. 1. A claim is the resulting debt created by the over issuance of benefits (OI). *Id.* Recoupment is an action to identify and recover a benefit. *Id.* The Department must take reasonable steps to promptly correct any overpayment of public assistance benefits, whether due to department or client error. BAM 700, 705, 715, and 725. An agency error OI is caused by incorrect actions by DHS, DIT staff, or department processes. BAM 705, p. 1. In general, agency error OIs are not pursued if OI amount is under \$500.00 per program. BAM 705, pp. 1-3. The policy officially changed to allow recoupment under \$125.00 effective January 1, 2010.

201045395/LMF

In the subject case, because the record does not substantiate the amount of the over issuance, the Department is not entitled to recoup the FAP benefits the Claimant allegedly should not have received.

The undersigned has reviewed the file and the information submitted and cannot make a factual determination that there was a FAP over-issuance. Accordingly, the Department's overissuance and recoupment action is REVERSED.

STATE EMERGENCY RELIEF

The State Emergency Relief (SER) program is established by 2004 PA 344. The SER program is administered pursuant to MCL 400.10, *et seq.*, and by final administrative rules filed with the Secretary of State on October 28, 1993. MAC R 400.7001-400.7049. Department of Human Services (DHS or department) policies are found in the State Emergency Relief Manual (ERM).

The Claimant applied for Emergency Burial for her still born child on December 21, 2009 and the application was registered on January 12, 2010. The Department could not advise why the application was denied and the eligibility summary it provided as an exhibit at the hearing indicated that it was "pseudo authorized" and also denied on March 13, 2010. Given the lack of explanation as to what occurred the Department's denial cannot be upheld and therefore its denial of the SER burial application is REVERSED for the reason the department did not meet its burden of proof to establish a proper basis for its denial in accordance with Department policy.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the Department did not substantiate by the evidence it presented that an over issuance of FAP benefits occurred and thus is not entitled to a recoupment of the Claimant's FAP benefits. The Department's denial of the Claimant's SER application is also REVERSED as the Department did not substantiate the basis for its denial of the Claimant's application.

It is, therefore, ORDERED that the OI and recoupment is REVERSED and that the Department is not entitled to a recoupment of FAP benefits as it did not establish an over issuance.

It is further ORDERED that if the Department previously has deducted any recoupment amount from the Claimant's FAP benefits as a result of the over issuance in question the Department is ordered to supplement the Claimant for any monies that were already recouped by the Department commencing the month of any recoupment began through the date of the hearing.

201045395/LMF

The department is further ORDERED to reopen and reinstate the Claimant's SER burial application retroactive to the date of application, December 21, 2009 and to determine the Claimant's eligibility therefore, and if eligible, to supplement the Claimant for SER burial benefits she was otherwise entitled to receive.



Lynn M. Ferris
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: 8/31/2010

Date Mailed: 8/31/2010

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 of the rehearing decision.

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