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: 201046507
Issue No: 3052
Case No: [redacted]
Load No:
Hearing Date:
September 8, 2010
Kent County DHS

ADMINISTRATIVE LAW JUDGE: Kevin Scully

HEARING DECISION

This matter is before the undersigned Administrative Law Judge by authority of MCL 400.9 and MCL 400.37. Claimant's request for a hearing was received on May 3, 2010. After due notice, a telephone hearing was held on Wednesday, September 8, 2010.

ISSUE

Whether the Department of Human Services (Department) properly determined that the Claimant received an overissuance of FAP benefits that the Department is entitled to recoup?

FINDINGS OF FACT

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

1. On July 25, 2008, the Claimant completed an application for FAP benefits. This application includes her son [redacted] in the FAP group. Department Exhibits 5 and 16.

2. On November 14, 2008, the Claimant submitted a Change Report. The Claimant removed [redacted] from this form. Department Exhibits 18 – 20.

3. On February 3, 2009, the Claimant submitted an application for FAP benefits. This application does not include her son [redacted] in the FAP group. Department Exhibit 34.

4. Due to Department error, the FAP benefits were determined for the months of January of 2009, May of 2009, and June of 2009, with the Claimant's son [redacted] as a FAP group member after the Claimant had reported that he was no longer living in the household. Department Exhibits 35 – 37, and 40-43.

5. The Department received the Claimant's request for a hearing on May 3, 2010, protesting the recoupment of FAP benefits.

CONCLUSIONS OF LAW

The Food Assistance Program (FAP) (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 (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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), Reference Table Manual (RFT), and the Bridges Reference Manual (BRM).

FAP group composition is established by determining who lives together, the relationship of the people who live together, whether the people living together purchase and prepare food together or separately, and whether the persons resides in an eligible living situation. BEM 212.

An overissuance is the amount of benefits issued to the client group in excess of what they were eligible to receive. BAM 705. The amount of the overissuance is the amount of benefits the group actually received minus the amount the group was eligible to receive. BAM 720. When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the overissuance. BAM 700.

Department errors are caused by incorrect actions by the Department. BAM 705. Department error overissuances are not pursued if the estimated overissuance is less than $125 per program. BAM 700. Client errors occur when the customer gave incorrect or incomplete information to the Department. Client errors are not established if the overissuance is less than $125 unless the client group is active for the overissuance program, or the overissuance is a result of a quality control audit finding. BAM 700.

On November 14, 2008, the Claimant submitted a Change Report. This form does not list the Claimant's son [redacted]) as a member of her household. Due to Department error, the Department included [redacted]. in the FAP group when it determined FAP benefits for the months of January of 2009, May of 2009, and June of 2009. The Claimant received FAP benefits totaling [redacted] during these three months when she was actually entitled to receive [redacted]. Therefore, the Claimant received a FAP overissuance o[redacted]

The Claimant argued that she should not be required to repay benefits issued to her due to the Department's error. The Claimant testified that she had no reason to suspect

that the Department had failed to remove [redacted]. from the FAP group. The Claimant testified that a fair resolution to the situation would be for the Department to take responsibility for at least half of the overissuance because it was caused by Department error.

However, the claimant's grievance centers on dissatisfaction with the department's current policy. The claimant's request is not within the scope of authority delegated to this Administrative Law Judge. Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations, or make exceptions to the department policy set out in the program manuals. Furthermore, administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. Michigan Mutual Liability Co. v Baker, 295 Mich 237; 294 NW 168 (1940).

Based on the evidence and testimony available during the hearing, the Department has established that the Claimant received an overissuance of FAP benefits that the Department is required to recoup.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department acted in accordance with policy in determining that the Claimant received an overissuance of FAP benefits that the Department is required to recoup.

The Department's FAP recoupment determination is AFFIRMED. It is SO ORDERED.

/s/_____
Kevin Scully
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: _September 23, 2010_

Date Mailed: _September 24, 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.

KS/vc

cc: [redacted]