

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.: 2010-48811
Issue No.: 3020
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: September 15, 2010
Wayne County DHS (57)

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 September 15, 2010. The claimant appeared and testified. [REDACTED], FIM and [REDACTED], ES appeared on behalf of the Department.

ISSUE

Whether the Department is entitled to a recoupment for an overissuance to Claimant's FAP benefits in the amount of \$994.00.

FINDINGS OF FACT

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

1. The Claimant was an active FAP recipient but no longer receives FAP benefits due to changes in circumstances affecting her benefits related to her group size and income.
2. The Claimant received a Notice of Balance Due dated June 1, 2010 which advised the claimant that she owed \$944 due to an over issuance of FAP benefits. Exhibit 1.
3. Apparently, the department made an error when computing the claimant's FAP budget covering the period October 1, 2009 through April 30, 2010, however the testimony it presented was confusing and unclear.

4. At the hearing the department did not provide actual FAP budgets showing FAP benefits the claimant actually received and FAP benefits that the claimant should have received during the period in question.
5. The department did not provide an over issuance summary demonstrating the amount of the over issuance for each month in question which was related to the FAP budgets but only provided the Notice of Balance Due.
6. After an hour recess during which the department was allowed time to provide the necessary documents to establish the over issuance, the department indicated that the documents it had provided did not establish the amount of the over issuance and that there were still errors that need to be corrected.
7. The department did not prove through clear and convincing evidence the amount of the over issuance and thus has not established that the claimant owes any amount for over issuance of FAP benefit and thus the department cannot recoup for an over issuance of FAP benefits.
8. The claimant requested a hearing on June 10, 2010 protesting the department's claim that she had been overissued FAP benefits and also indicated that she had been told by the department that dates had been entered wrong and that she did not owe any money to the department for over issuance. This caused the claimant to dismiss her initial hearing request. The claimant never received anything in writing as promised from the department to clear up the matter.

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 \$994 due to Agency error in entering the group size which allegedly caused the claimant's FAP benefit allotment to be incorrect. The Department did not provide correct and accurate information necessary to determine how the overissuance was determined, and submitted no overissuance summary. As explained to the

department at the hearing, it is required to prove the accuracy of and establish by clear evidence the debt which it is attempting to collect at the hearing. A general conclusion either made by testimony or a written document of the amount owed is not enough.

After ample opportunity to provide the necessary information to establish the over issuance amount at the hearing, the Department did not establish that the Claimant was over issued benefits. Even after an hour recess, the department was unable to prove with specificity the precise amount of FAP benefits the claimant was over issued and thus owed to the department.

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, and the information it provided was inaccurate.

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. BAMs 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.

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 as it did not establish a debt.

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 any recoupment action is REVERSED.

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 Notice of Balance Due is of no force and effect.

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It is, therefore, ORDERED that the OI and recoupment is REVERSED.



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

Date Signed: 9/17/2010

Date Mailed: 9/17/2010

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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