

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

IN THE MATTER OF:



Reg. No: 201050314
Issue No: 3052
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 15, 2010
Wexford 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 July 26, 2010. After due notice, a telephone hearing was held on Wednesday, September 15, 2010.

ISSUE

Whether the Department of Human Services (Department) properly determined that the Claimant received an overissuance of Food Assistance Program (FAP) benefits?

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 applied for FAP benefits on August 28, 2008, as a group of three. Department Exhibit 1.
2. The Claimant reported the Retirement, Survivors, and Disability Insurance (RSDI) received by her husband and son on the August 28, 2008, FAP application. Department Exhibit 6.
3. The Claimant reported her earned income on the August 28, 2008, FAP application. Department Exhibit 7.

4. The Claimant's husband received monthly RSDI in the gross monthly amount of [REDACTED]. Department Exhibit 17.
5. The Claimant's son received monthly RSDI in the gross monthly amount of [REDACTED] effective December 1, 2007. Department Exhibit 18 and 49.
6. The Claimant's son began receiving a monthly RSDI benefit in the gross monthly amount of [REDACTED] on October 1, 2008. Department Exhibit 49
7. The Claimant receives monthly earned income in the gross monthly amount of [REDACTED] for September of 2008, and [REDACTED] for October of 2008. Department Exhibits 19 – 20, and 50.
8. The Claimant took a leave of absence from her job beginning September 30, 2008. Department Exhibit 21.
9. The Department approved the Claimant's FAP application and determined that she was eligible for a monthly FAP allotment from September 1, 2008, through December 31, 2008. Due to Department error, this determination did not include Claimant's earned income or her son's RSDI income. Department Exhibit 23.
10. On July 12, 2010, the Department sent the Claimant notice that she had received a FAP overissuance of [REDACTED] from September 1, 2008, through December 31, 2008. Department Exhibit 67.
11. On July 26, 2010, the Department received the Claimant's request for a hearing, 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).

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.

For FAP purposes, all earned and unearned income available to the Claimant is countable. Earned income means income received from another person or organization or from self-employment for duties that were performed for compensation or profit. Unearned income means all income that is not earned, including but not limited to funds received from the Family Independence Program (FIP), State Disability Assistance (SDA), Child Development and Care (CDC), Medicaid (MA), Social Security Benefits (RSDI/SSI), Veterans Administration (VA), Unemployment Compensation Benefits (UCB), Adult Medical Program (AMA), alimony, and child support payments. The amount counted may be more than the client actually receives because the gross amount is used prior to any deductions. BEM 500.

The Department determines a client's eligibility for program benefits based on the client's actual income and/or prospective income. Actual income is income that was already received. Prospective income is income not yet received but expected. Prospective budgeting is the best estimate of the client's future income. BEM 505.

All income is converted to a standard monthly amount. If the client is paid weekly, the Department multiplies the average weekly amount by 4.3. If the client is paid every other week, the Department multiplies the average bi-weekly amount by 2.15. BEM 505.

The Claimant applied for FAP benefits on August 28, 2008, as a group of three. The Claimant reported all earned and unearned income received by group members to the Department on her application for benefits. The Claimant's husband received RSDI in the gross monthly amount of [REDACTED], until his death in October of 2008. The Claimant's son received RSDI in the gross monthly amount of [REDACTED], until September of 2008, when his RSDI benefit increased to [REDACTED]. The Claimant received earned income in the gross monthly amount of [REDACTED] for September of 2008, and [REDACTED] for October of 2008. The Claimant took a leave of absence from her job beginning September 30, 2008.

The Department approved the Claimant's FAP application. Due to Department error, the Department did not include the Claimant's earned income or her son's RSDI benefits in the Claimant's FAP budget from September 1, 2008, through December 31, 2008. As a result, the Claimant received FAP allotments totaling [REDACTED] when she was eligible to receive [REDACTED].

The Claimant argued that the Department's policy is unfair as applied to her circumstances. The Claimant testified that she fulfilled all of her duties under Department policy and that the Department's error that caused the overissuance.

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 at the hearing, the Department has established that the Claimant received a FAP overissuance of [REDACTED] due to Department error.

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 it is required to recoup a FAP overissuance totaling [REDACTED].

The Department's recoupment of the FAP overissuance 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.

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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:

