

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.: 2010-50348
Issue No.: 3052/6019
Case No.: [REDACTED]
Hearing Date: December 15, 2010
Oakland County DHS (02)

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 December 15, 2010. The claimant appeared and testified. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, appeared and testified.

ISSUE

Whether DHS established a basis to recoup \$265 in allegedly over-issued Food Assistance Program (FAP) benefits and \$1334.98 in Child Development and Care (CDC) 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. Claimant was an ongoing FAP and CDC benefit recipient.
2. Claimant's CDC and FAP benefit eligibility was based in part on the following verified gross income amounts received by Claimant: \$860.34 on 10/2/09, \$862.29 on 10/16/09 and \$747.50 on 10/30/09.
3. DHS originally determined Claimant to be eligible for CDC benefits beginning pay period 11/8/2009 and CDC eligibility continued through 5/8/10.
4. To determine Claimant's CDC eligibility beginning 11/8/09, the DHS database, Bridges, mistakenly determined Claimant's monthly gross income as \$804/month (Exhibit 1).

5. On an unspecified date, Claimant verified receiving the following gross income amounts (Exhibit 6): \$745.55 on 3/5/10 and \$929.11 on 2/19/10.
6. When Claimant's CDC budget was updated on an unspecified date in 5/2010, DHS determined that Claimant would prospectively receive \$1800/month in employment earnings (Exhibit 2), was not eligible for future CDC benefits (Exhibit 3) and that Claimant was improperly over-issued \$1334.98 (Exhibit 5) in CDC benefits from 11/8/09 through 5/8/10.
7. Based on the same 5/2010 DHS action, DHS determined that Claimant was over-issued FAP benefits of \$295 for 1/2010.
8. On an unspecified date, DHS mailed Claimant notices of an attempt to recoup \$265 in FAP benefits and \$1334.98 in CDC benefits.
9. Claimant requested a hearing on 7/12/10 disputing the attempted recoupment of CDC and FAP benefits by DHS; Claimant does not dispute the termination of CDC benefits.

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). The Department of Human Services (formerly known as the Family Independence Agency) 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) and the Reference Tables Manual (RFT).

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.*

For FAP and CDC benefits, DHS may pursue an OI whether it is caused by the client or the agency. *Id.* at 5. An over-issuance caused by DHS error is not pursued if the estimated OI amount is less than \$125 per program. BAM 705 at 1.

Claimant's primary contention is that DHS should not recoup over-issued FAP benefits caused by DHS error. Though Claimant's argument may be morally correct, the undersigned is bound by DHS policy in the analysis of whether to affirm or reverse DHS actions. DHS policy clearly allows recoupment of over-issued FAP benefits even when

the over-issuance is completely the fault of DHS if the over-issuance exceeds \$125. It is found that DHS was authorized to recoup over-issued FAP benefits even if they were responsible for causing the over-issuance.

Thought it is found that DHS can recoup over-issued benefits caused by their own error, it still must be established that there is a basis to recoup benefits. Concerning the alleged FAP benefit OI, the only evidence submitted in support of the recoupment was a "Claim search"; this is a document which shows a \$309 claim amount for over-issued FAP benefits from an overpay start date of 1/1/10 and an overpay end date of 1/31/10. Presumably, Bridges, the DHS database calculated the benefit over-issuance though no evidence was submitted supporting how the OI was calculated. The Claim Search is insufficient, by itself, to support a finding that an over-issuance of FAP benefits occurred. The undersigned is not inclined to rely on a determination by Bridges without supporting evidence of the over-issuance, especially considering the present circumstance when DHS concedes that Bridges caused the over-issuance in the first place. A budget supporting the correct FAP benefit amount for 1/2010 is an expected document to support that an over-issuance occurred. Without such evidence, the undersigned has no way to determine how DHS calculated what Claimant should have received in FAP benefits for 1/2010. It is found that DHS failed to establish a basis to recoup \$295 (or \$308 according to the Claim Search) in FAP benefits from 1/2010.

The Child Development and Care program is established by Titles IVA, IVE and XX of the Social Security Act, the Child Care and Development Block Grant of 1990, and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The program is implemented by Title 45 of the Code of Federal Regulations, Parts 98 and 99. The Department of Human Services (formerly known as the Family Independence Agency) provides services to adults and children pursuant to MCL 400.14(1) and MAC R 400.5001-5015. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

The above stated policy which allows recoupment of FAP benefits stemming from a DHS error also applies to CDC benefits. Thus, it is found that DHS may pursue recoupment of CDC benefits against Claimant even though the over-issuance was unquestionably the error by DHS.

Although it was found that DHS failed to establish what Claimant should have received in FAP benefits, DHS did establish what Claimant should have allegedly received in CDC benefits but for the DHS error, \$0 CDC benefits. The basis for the DHS conclusion is that had Claimant's income been properly calculated in 11/2010, then Claimant would have been over the income limit for CDC benefits and thus, ineligible to receive CDC benefits.

DHS credibly testified that Claimant received the following bi-weekly gross income amounts: \$747.50 on 10/30/09, \$862.29 on 10/16/09 and \$860.34 on 10/2/09. DHS stated that Bridges somehow determined Claimant's monthly income was only \$804 (see Exhibit 1) based on Claimant's verified income which led to an incorrect determination that Claimant was eligible for CDC benefits.

For non-child support income, DHS is to budget income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month. BEM 505 at 4. DHS is discard a pay from the past 30 days if it is unusual and does not reflect the normal, expected pay amounts. *Id.*

Claimant testified that at the time of his CDC benefit application, his employment income varied. Claimant stated that the \$747.50 was a more representative income than the higher checks. Under the circumstances of DHS attempting to recoup CDC benefits that may have been over-issued because of DHS error, the undersigned is inclined to give Claimant every benefit of the doubt concerning his CDC eligibility. One of Claimant's 3/2010 pays that was factored in terminating Claimant's CDC benefits was only \$745.55, an amount which tends to support that Claimant's 10/2009 representative pay check was closer to \$747.50 than the other amounts exceeding \$800. It is found that DHS should have calculated Claimant's CDC eligibility based on the \$747.50 income and disregarded Claimant's other unrepresentative pays.

DHS converts biweekly non-child support income into a 30 day period by multiplying the average income by 2.15. BEM 505 at 6. Multiplying Claimant's gross average bi-weekly employment income (\$747.50) by 2.15 results in a monthly countable income amount of \$1607 (dropping cents).

For CDC benefits based on income eligibility, the program group's countable income is to be tested against the Child Development and Care Income Eligibility Scale found in RFT 270. BEM 703 at 13. Based on the scale found in RFT 270, Claimant is not eligible for CDC benefits if the group is income does not exceed \$1607. Claimant's income (\$1607) does not exceed \$1607. Specifically, based on Claimant's income, Claimant was entitled to CDC benefits based on a 70% DHS payment rate.

Though it is known that DHS originally determined Claimant to be eligible for a 95% payment rate (Exhibit 1), the undersigned is not inclined to find an over-issuance of CDC benefits occurred. The only evidence supporting the amount of allegedly over-issued CDC benefits was a "Claim Search" (Exhibit 5) document which summarized the amount of CDC benefits Claimant received from 11/8/09-5/8/10. The undersigned is not inclined to give Bridges the benefit of accuracy on a summarized benefit over-issuance in a case where Bridges is the cause of the over-issuance. Without specifics supporting what CDC benefits actually received between 11/8/09-5/8/10, the undersigned is not inclined to find that an over-issuance occurred.

If improper budgeting of income caused the OI, DHS is to use actual income for the past OI month for that income source. BAM 705 at 6. This policy applied to CDC and FAP over-issuances.

DHS presented no evidence of Claimant's income for any benefit month in which an over-issuance allegedly occurred. Had DHS denied Claimant's original CDC benefits application as DHS states they should have done, it would not necessarily follow that Claimant was or would have been ineligible for CDC benefits in subsequent months. A finding that Claimant had excess income for 10/2010 does not establish an over-issuance of CDC benefits from 11/8/09-5/8/10. DHS should provide proof of Claimant's actual income from the period when the alleged over-issuance occurred.

DHS presented two of Claimant's check stubs from an over-issuance period; they had pay dates of 2/19/10 and 3/5/10. However, the undersigned does not have any evidence of how these are tied to a CDC benefits period or an over-issuance of CDC benefits. It is found that DHS failed to establish a basis to recoup CDC benefits for two reasons: a failure to properly budget Claimant's verified income from 10/2010 and a failure to calculate an OI using actual income and establishing how that income is tied to the over-issuance.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS failed to establish a basis to recoup \$265 in FAP benefits from 1/2010 and \$1334.98 in CDC benefits from 11/8/09-5/8/10. It is ordered that DHS cease recoupment against Claimant for the allegedly over-issued CDC and FAP benefits. It is also ordered that DHS supplement Claimant for any already recouped benefits. The actions taken by DHS are REVERSED.



Christian Gardocki
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: 12/27/2010

Date Mailed: 12/27/2010

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

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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.

CG/jlg

cc:

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