

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: 201054376

Issue No: 3052

[REDACTED]

Hearing Date:

October 14, 2010

Grand Traverse 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 September 13, 2010. After due notice, a telephone hearing was held on Thursday, October 14, 2010.

**ISSUE**

Whether the Department of Human Services (Department) properly determined that the Claimant receive 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 is an ongoing FAP recipient as a group of three.
2. The Claimant received monthly worker's compensation payments in the gross monthly amount of [REDACTED]
3. On September 7, 2010, the Department notified the Claimant that she had received a [REDACTED] FAP overissuance from November 1, 2007, through June 30, 2008. Department Exhibit 1.
4. The Department received the Claimant's request for a hearing on September 13, 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).

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.

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.

The Claimant is an on going F AP recipient and received FAP benefits from November 1, 2007, through June 30, 2008. During this time, the Claimant reported to the Department that she had been receiving worker's compensation payments. Due to Department error, this income was not used to determine the Claimant's eligibility for FAP benefits.

The Claimant received monthly worker's compensation payments in the gross monthly amount of [REDACTED]. This amount was determined by multiplying her weekly worker's compensation payment of [REDACTED] by the 4.3 conversion factor. The Claimant's adjusted gross income of [REDACTED] was determined by subtracting the [REDACTED] standard deduction from the claimant's monthly income. The Claimant was not entitled to an excess shelter deduction because her monthly shelter costs were less than half of her adjusted gross income. Therefore, the Claimant's net income was [REDACTED].

A claimant with a group size of three and a net income of [REDACTED] is entitled to a FAP allotment of \$ [REDACTED] which is the amount of FAP benefits granted to the Claimant for this period. RFT 260 (1/1/2008).

Due to Department error, the Claimant's worker's compensation payments were not used to determine her eligibility for FAP benefits. A Claimant with a group size of three and no income is entitled to a FAP allotment of \$ [REDACTED] which is the amount of FAP benefits granted to the Claimant for this period. RFT 260 (1/1/2008).

The Claimant received a monthly FAP allotment of \$ [REDACTED] in each month from November 1, 2007, through June 30, 2008. The Claimant was eligible for a monthly FAP allotment of \$ [REDACTED] during these months. Therefore, the Claimant received a \$ [REDACTED] FAP overissuance during each of these months for a total FAP overissuance of \$ [REDACTED].

The Claimant argued that she should not be punished for the Department's failure to properly determine her FAP allotment when she had fulfilled her duty to report her income.

However, the claimant's grievance centers on dissatisfaction with the department's current policy. The Department is required to recoup overissuances of FAP benefits, even when the Claimant is not at fault. 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. [REDACTED] 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 a \$ [REDACTED] FAP overissuance, which 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 established that the Claimant received a \$ [REDACTED] FAP overissuance.

The Department's recoupment of overissued FAP benefits is AFFIRMED. It is SO ORDERED.

\_\_\_\_/s/

Kevin

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Scully  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: 10/19/2010

Date Mailed: 10/19/2010

**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/alc

cc: [REDACTED]