

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

██████████,

Claimant.

Reg No: 20109433

Issue No: 3020

Case No: ██████████

Load No: ██████████

Hearing Date:

January 11, 2010

Macomb County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

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 conducted from Detroit, Michigan on January 11, 2010. The Claimant appeared and testified at the hearing. Dreama Piech, a Recoupment Specialist, appeared on behalf of the Department.

ISSUE

Whether the Department is entitled to recoup an \$874.00 FAP over-issuance for the period from October 1, 2007 – December 31, 2007 due to the Department's failure to add Claimant's income into the FAP budget.

FINDINGS OF FACT

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

1. Claimant was an active FAP recipient.

2. Claimant testified that she returned to work at her seasonal employment and reported the start of income to her caseworker.
3. The Claimant's FAP budget was prepared without inclusion of her biweekly income.
4. The Department indicated that it failed to take action to include Claimant's income.
5. The Department recalculated the Claimant's FAP budget and determined there was an over-issuance of FAP benefits totaling \$874.00. (Exhibit 2).
6. The Department referred the case to a Recoupment Specialist ("RS") for investigation.
7. As a result of Agency error, the Claimant received an over-issuance for FAP for the period from October through December, 2007.
8. The Department sent a Notice of Over-issuance to Claimant on August 28, 2009. (Exhibit 2A).
9. The Claimant testified that the income used in the overpayment budgets was accurate based on her pay checks received.
10. Shelter and utility costs were utilized in the recoupment budgets.
11. On September 11, 2009, the Department received the Claimant's written request for a hearing protesting the proposed recoupment action.

CONCLUSIONS OF LAW

The Food Assistance Program, 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 (“DHS”), formally known as the Family Independence Agency, administers the FAP program pursuant to MCL 400.10, *et seq* and MAC R 400.3001-3015. Departmental policies are found in the Program Administrative Manual (“PAM”), the Program Eligibility Manual (“PEM”), and the Program Reference Manual (“PRM”).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 USC 601, *et seq.* The Department of Human Services (formerly known as the Family Independence Agency) administers the FIP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3101-3131. The FIP program replaced the Aid to Dependent Children (ADC) program effective October 1, 1996. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

A. Recoupment

In this case, the Department seeks recoupment of an over-issuance of FAP benefits due to the Department’s failure to properly include Claimant’s income in the FAP budgets. An over-issuance (“OI”) occurs when a client group receives more benefits than they are entitled to receive. PAM 700, p. 1. A claim is the resulting debt created by the overissuance 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. PAMs 700, 705, 715, and 725. An agency error OI is caused by incorrect actions by DHS, DIT staff, or department processes. PAM 705, p. 1. In general, agency error OIs are not pursued if OI amount is under \$10.00 per program. PAM 705, pp. 1-3.

Based on the evidence and testimony presented on the record, the undersigned finds that the Claimant provided verification of her income and properly informed her caseworker that she

was receiving wages. The Department failed to properly input the income and the budget was calculated without it. The failure of the Department resulted in a FAP overpayment for the period October through December, 2007.

However, based on the evidence, the Administrative Law Judge finds that the Department did not calculate the budgets properly and, therefore, the amount of FAP overpayment requested by the Department is not accurate as detailed below.

B. FAP

The federal regulations define household income to include all earned income. 7 CFR 273.9(b). All monthly income must be converted to a nonfluctuating monthly amount. Only 80% of earned income is counted in determining FAP benefits. PEM 550. Under 7 CFR 273.9, as amended, \$132.00 is deducted from the gross income of FAP recipients in determining FAP grants. (RFT 250). Unearned income includes SSI payments for family members (PEM 500, p. 33) and child support (PEM 500, p. 10). The average of child support payments received in the past 3 calendar months is used to prospectively calculate child support, unless changes are expected. Amounts that are unusual and not expected to continue should not be included in the calculation.

Under 7 CFR 273.9 deductions for excess shelter are also made. PEM 554. Id. There is a standard heat and utility deduction as well as a standard deduction for telephone bills. Id. The standard deductions are a set amount that is applied regardless of the actual expenses incurred by the Claimant.

When calculating the benefit amount, according to PEM/BEM 556, the Shelter set offs are added together to equal A. The income after deductions is divided by two and equals B. $A - B = C$. The lesser of C or the maximum shelter amount set forth in RFT 255 will be deducted

from the reduced income in determining the final net amount. The amount of food assistance allotment is established by regulations at 7 CFR 273.10 based on a group's net income.

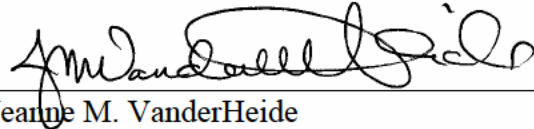
The income must be calculated on a monthly basis. Claimant was paid biweekly. Yet in October, the Department counted three paychecks. Using the actual pay stubs, Claimant earned \$2,086.00 per month. The Administrative Law Judge found Claimant's testimony credible. According to the aforementioned policy on budgeting, Claimant's shelter costs equal \$515.72 + 176.64 + \$529 = \$1221.00 (A). 50% of the income less deductions = \$754.00 (B). (A-\$1221)-(B-\$754)=\$467.00. The maximum shelter expense at that time, however, was \$431.00. Claimant, therefore, has a net monthly income of \$1,112.00. This was obtained by subtracting the standard deduction of \$125.00 and the excess shelter amount of \$431 from 80 % of the gross income of \$2,086.00. A household of one person with a net monthly income of \$1,112.00 is entitled to a monthly FAP grant of \$10.00 per month. RFT 260.

Therefore, the recoupment amount requested for FAP is incorrect and over by \$10.00. Unfortunately, the overpayment is still over \$10.00 and pursuant to PAM 705, the Department is entitled to recoupment. While this Administrative Law Judge does not necessarily agree with the Department policy, this Judge's jurisdiction is limited to interpreting whether the Department followed the regulations. Accordingly, the Department's FIP and FAP OI and recoupment actions are AFFIRMED in the amount of \$864.00.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the Department over calculated the recoupment of Claimant's FAP benefits by \$10.00.

Accordingly, it is ORDERED that the OI and recoupment for FAP benefits is AFFIRMED in the amount of \$864.00.



Jeanne M. VanderHeide
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 01/19/10

Date Mailed: 01/20/10

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.

JV/dj

cc:

