

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Claimant

Reg. No.: 2010-10339

Issue No.: 1030, 3052

Case No.: [REDACTED]

Load No.: [REDACTED]

Hearing Date:

April 28, 2010

Wayne County DHS (17)

ADMINISTRATIVE LAW JUDGE: Jan Leventer

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to Michigan Compiled Laws (MCL) 400.9 and 400.37, and Claimant's request for a hearing. After due notice, a telephone hearing was conducted from Detroit, Michigan, on April 28, 2010. Claimant appeared and testified. [REDACTED]

[REDACTED], appeared and testified on behalf of the Department of Human Services (DHS).

ISSUE

Whether recoupment of Family Independence Program (FIP) and Food Assistance Program (FAP) benefits for November, 2008, and January-February, 2009, is in accordance with DHS' overissuance policy?

FINDINGS OF FACT

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

1. Agency error caused the overissuance of FIP monthly benefits to Claimant of \$597 for the three months of November, 2008, January, 2009, and February, 2009. The total amount is \$1,791.
2. Agency error caused the overissuance of FAP monthly benefits to Claimant for two months in the amounts of \$393 in November, 2008, and \$354 in January, 2009. The total amount is \$747.
3. Agency error caused the underissuance of FAP benefits to Claimant of \$42 in February, 2009. The total amount is \$42.
4. On November 13, 2009, DHS requested repayment of \$2,496 from Claimant with credit for the \$42 underissuance,.
5. Claimant requested a hearing by written Notice to DHS on October 29, 2009.

CONCLUSIONS OF LAW

FIP was established by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 United States Code Sec. 601 *et seq.* DHS administers FIP pursuant to MCL 400.10 *et seq.*, and Michigan Administrative Code Rules 400.3101-3131. DHS' FIP policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT). These manuals are available online at www.mich.gov.

FAP was established by the Food Stamp Act of 1977 and is implemented by Federal regulations found in Title 7 of the Code of Federal Regulations (CFR). DHS administers FAP pursuant to MCL 400.10 *et seq.* and Michigan Administrative Code Rules 400.3001-3015. DHS' FAP policies are also found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT), online at www.mich.gov.

DHS' policies and procedures are established in the manuals cited above, and I now look to the manuals to determine if DHS acted within its own legally established parameters. I find there is one manual item that is appropriate to consider in this case, Bridges 705, "Agency Error Overissuances." I further find there are two versions of BAM 705 which are applicable in this case. There was an August 1, 2008, policy version of BAM 705 in effect in November, 2008, and a January 1, 2009, version of the policy in effect in January and February, 2009.

In both of these versions of BAM 705, there is an "Agency Error Exceptions" subsection which states that with regard to both FIP and FAP:

Agency errors are not pursued if the estimated OI [overissuance] amount is less than \$500 per program. BAM 705 p. 1.

I find there are five alleged overissuances in this case and I will consider each of them separately, month by month. Thus, I am examining the evidence and testimony to determine if, on each occasion, DHS effectuated its own policies and procedures.

November, 2008. DHS alleges that, in November, 2008, there was an overissuance of \$393 in FAP benefits and \$597 in FIP benefits. I find that DHS policy at that time was not to pursue overissuances of less than \$500 per program. Accordingly, I find that DHS cannot now maintain there was an overissuance and override their previous policy not to pursue amounts less than \$500.

Going to the alleged November, 2008, FIP overissuance, which *was* over \$500, I find that DHS policy and procedure at that time was to pursue overissuances over \$500. Accordingly, DHS may maintain their recoupment of the November FIP benefit from Claimant.

January, 2009. DHS alleges that FAP and FIP overissuances occurred in January, 2009, in the amounts of \$354 for FAP and \$597 for FIP. A new version of BAM 705 was issued in January, 2009. The new version of BAM 705 reiterated the \$500 recoupment limit. As the FAP

amount was less than \$500, but, when added to the previous FAP overpayment, now totals more than \$500. DHS is, therefore, correct in requesting Claimant repay FAP benefits for November, 2008, and January, 2009.

February, 2009. DHS alleges there was a \$597 FIP overissuance in February, 2009. The January, 2009, version of BAM 705 was still in effect in February and, therefore, DHS has the authority to recoup this FIP benefit from Claimant.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that DHS is proper and correct in initiating recoupment proceedings for FIP benefits for the three months of November, 2008, and January and February, 2009, and for FAP benefits for November, 2008, and January, 2009. Claimant is entitled to a credit of \$42 based on an underpayment of that amount of FAP benefits in February, 2009. DHS' actions are correct and DHS may proceed with recoupment procedures in the amount of \$2,496.



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

Date Signed: April 30, 2010

Date Mailed: April 30, 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 90 days of the filing of the original request.

2010-10339/JL

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing 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.

JL/pf

cc:

