

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: 2010-12612
Issue No: 3052
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
January 14, 2010
Barry County DHS

ADMINISTRATIVE LAW JUDGE: Ivona Rairigh

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on January 14, 2010. Claimant personally appeared and testified.

ISSUE

Did the department correctly determine that the claimant received more Food Assistance Program (FAP) benefits than he was entitled to receive due to department error, and is the department entitled to recoup such overissued 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 a FAP recipient when he submitted a new shelter verification form on April 29, 2009, for his new address and housing costs.

2. Claimant's FAP budget was updated on April 30, 2009, but his previous property tax and heat obligation that he no longer had was left in the budget.

3. In November, 2009 claimant's FAP budget was updated and the error in not removing the property tax and heat obligation discovered. Budget was corrected and it was determined that the claimant was overissued FAP benefits from June 1, 2009 through November 1, 2009, for a total of \$670. (Department's Exhibit 8).

4. Claimant was mailed a Notice of Overissuance on November 17, 2009 and requested a hearing on November 24, 2009.

CONCLUSIONS OF LAW

The Food Assistance Program (FAP) (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 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) and the Bridges Reference Manual (BRM).

Departmental policy states:

BENEFIT OVERISSUANCES

DEPARTMENT POLICY

All Programs

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the overissuance (OI). This item explains OI types and standard of promptness. BAM, Item 700, p. 1.

OVERISSUANCE TYPES

Department Error

All Programs

A department error OI is caused by incorrect action (including delayed or no action) by DHS staff or department processes. Some examples are:

- . Available information was not used or was used incorrectly
- . Policy was misapplied
- . Action by local or central office staff was delayed
- . Computer or machine errors occurred
- . Information was not shared between department divisions (services staff, Work First agencies, etc.)
- . Data exchange reports were not acted upon timely (Wage Match, New Hires, BENDEX, etc.)

If unable to identify the type of OI, record it as a department error.

FIP, SDA, CDC, and FAP

Department error OIs are not pursued if the estimated OI amount is less than \$500 per program.

Exception: There is no threshold limit on CDC **system** errors. RRS in central office will recoup these types of overissuances.

FIP, SDA and FAP Only

Note: The department error threshold was lowered to \$500 effective April 1, 2005 and retroactive back to September 1, 2003. If the department error includes September 2003, the \$500 threshold applies. If all months of the error are prior to September 2003, the \$1,000 threshold applies.

OVERISSUANCE PERIOD

FIP, SDA, CDC and FAP Only

OI Begin Date

The OI period begins with the first month (or first period for CDC) when benefit issuance exceeds the amount allowed by policy, or 12 months before the discovery date, whichever is later.

To determine the first month of the OI period for changes reported timely and not acted on, allow time for:

- the full Standard of Promptness (SOP) for change processing, per BAM 220, **and**
- the full negative action suspense period. See PAM 220, EFFECTIVE DATE OF CHANGE.

OI End Date

The OI period ends the month (or payment period for CDC) before the month when the benefit is corrected.

OI Discovery Date

FIP, SDA, CDC and FAP Only

The OI discovery date for a department error is the date the RS can determine there is a department error. BAM, Item 705, pp. 4-5.

Claimant first complains in the hearing that he has a number of expenses that should be taken into account when computing the amount of FAP benefits he is entitled to receive. Claimant's expenses as listed in his hearing request include car insurance, auto expenses and repairs, gas and oil, dog food, vets expenses, etc. Departmental policy regarding allowable expenses for the FAP states:

FAP ALLOWABLE EXPENSES AND EXPENSE BUDGETING

DEPARTMENT POLICY

This item applies **only** to FAP.

Budget the following expenses to determine net income for FAP eligibility and benefit levels. BEM, Item 554, p. 1.

- . Groups with **no** Senior/Disabled/Veteran (SDV) member:
 - .. dependent care expense up to the maximum in RFT 255, and
 - .. excess shelter up to the maximum in RFT 255, and
 - .. court ordered child support and arrearages paid to non-household members. BEM, Item 554, p. 1.

- . Groups **with** one or more SDV member:
 - .. dependent care expense up to the maximum in RFT 255; and
 - .. excess shelter, and
 - .. court-ordered child support and arrearages paid to non-household members, and
 - .. medical expenses for the SDV member(s) that exceed \$35 BEM, Item 554, p. 1.

Therefore, expenses listed by the claimant cannot be allowed when computing his FAP benefits, and this was explained to him.

Secondly, claimant does not feel he should repay overissuance caused by department error. However, above cited policy clearly requires that department recoup any overpayments, even if they are caused by department error, and this requirement is set by federal law and regulations pertaining to the FAP.

Lastly, claimant appeared to be under the impression he must pay the total overissuance in one lump sum. This Administrative Law Judge explained to the claimant that the overissuance will be through a 10% monthly recoupment. As the claimant currently receives \$78 per month, recoupment amount will be \$7.80 per month. This appeared to be helpful in resolving some of claimant's issues with the recoupment.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department correctly determined that the claimant received more FAP benefits than he was entitled to receive due to department error. Department is entitled to recoup such overissued benefits.

Accordingly, department's action is AFFIRMED, and it is SO ORDERED.

/s/ _____
Ivona Rairigh
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: February 16, 2010

Date Mailed: February 22, 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.

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.

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