

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: 2010-14567

Issue No: 3052

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

February 10, 2010

Oceana County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

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 February 10, 2010. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services (the department) properly establish that claimant received an overissuance of Food Assistance Program (FAP) benefits which should be recouped?

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 received a DHS-4538A, Notice of Overissuance, in the amount of \$144 in Food Assistance Program benefits.

(2) The department determined that the error was agency error.

(3) The department alleged that claimant was given a shelter expense of lot rent on his trailer which he should not have been given.

(4) On November 17, 2009, the department caseworker sent claimant notice of the overissuance.

(5) On December 22, 2009, claimant filed a request for a hearing to contest the department's negative action.

### 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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

In the instant case, the department has alleged that agency error gave claimant an overissuance of Food Assistance Program benefits in the amount of \$144. Claimant received \$367 in Food Assistance Program benefits in July 2009. In August 2009 claimant received \$164 in Food Assistance Program benefits and in September 2009 claimant received \$164 in Food Assistance Program benefits. The department did not provide verification or any information which indicated when claimant received an overissuance of Food Assistance Program benefits in any amount. In addition, BAM, Item 705, p. 1 indicates that an agency error overissuance is caused by an incorrect action including delayed or no action by the Department of Human

Services or a DIT staff or department processes. Agency error overissuances are not pursued in the estimated overissuance amount is less than \$500 per program for Food Assistance Program benefits. BAM, Item 705, p. 1. The department is instructed that agency error overissuances are not pursued if the overissuance amount if under \$500 per program. It is not necessary to compute budgets for each month of the overissuance period to estimate the overissuance amount. If the estimate looks close to \$500, then refer the overissuance to the recoupment specialist to make a determination. BAM, Item 705, p 2.

In the instant case, the department alleges that claimant was overissued \$144 in Food Assistance Program benefits. This is not even close to \$500. Therefore, the department has not established by the necessary, competent, material and substantial evidence on the record that it was acting in compliance with department policy when it proposed to recoup \$144 in Food Assistance Program benefits. The department caseworker alleged that the computer/Bridges made several errors in the instant case which resulted in the request for recoupment. After the record was closed, the department caseworker FAXED the Administrative Law Judge a Recoupment Interim Bulletin which indicates that as of November 13, 2009 the agency overissuance threshold was changed to \$125 for all programs including CDC provider claims effective November 13, 2009. All agency errors with an overissuance of \$125 or more will be recouped. BPB 2010-005, issued 2/01/10. Claimant's overissuance was never established by evidence in this case. In addition, claimant's overissuance would have occurred before November 13, 2009, according to the evidence presented in this case.

#### DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department has not established by the necessary, competent, material, and

substantial evidence on the record that claimant had an overissuance of benefits and therefore the proposed recoupment must be denied.

Accordingly, the department's decision to recoup is REVERSED and the department is ORDERED not to recoup a department error, FAP overissuance, in the amount of \$144 because it has not been established and because it is not in excess of the \$500 agency error overissuance threshold.

/s/  
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Landis Y. Lain  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: February 12, 2010

Date Mailed: February 16, 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.

LYL/vmc

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