

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: 2010-15136

Issue No: 3020

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

February 10, 2010

Kent County DHS

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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 Wednesday, February 10, 2010. The claimant personally appeared and testified.

ISSUE

Did the department properly determine that the claimant received a Food Assistance Program (FAP) overissuance due to department error and did the department properly propose to recoup the overissuance?

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 was a recipient of FAP benefits that included his unemployment compensation benefits.

(2) In February 2009, the department caseworker received notice from the system that the claimant's unemployment compensation benefits would end in February 2009, which resulted in the department caseworker removing the claimant's unemployment compensation benefits from his FAP budget, which resulted in an increase in FAP benefits. (Department Exhibit 6-7)

(3) Subsequently, the claimant received an automatic extension of his unemployment compensation benefits which did not end in February 2009, but continued based on a federal extension.

(4) On February 25, 2009, the department caseworker sent the claimant a notice that showed a net income of zero dollars and an unearned income of zero dollars that would result in \$176 in FAP benefits effective March 2009. (Department Exhibit A)

(5) The claimant received \$176 in FAP benefits in March 2009 and \$200 in April 2009 through October 2009. (Department Exhibit 1)

(6) The department is stating that the claimant received an overissuance of FAP benefits for the months of May 2009 and June 2009 due to department error. The department is not seeking to recoup the overissuance that the claimant received in March 2009 of \$176 and April 2009 of \$200. The claimant received \$200 in May 2009, but only was eligible to receive \$16 and the claimant received \$200 in June 2009, but was only eligible to receive \$16. As a result, the claimant received an overissuance of \$368 for the months of May 2009 and June 2009, which the department is required to recoup due to department error. (Department Exhibit C-J)

(7) On December 15, 2009, the department sent the claimant a notice of overissuance for the \$368 overissued for May 2009 and June 2009 due to department error. (Department Exhibit K-N)

(8) On December 21, 2009, the department received a hearing request from the claimant, contesting the department's negative action.

(9) During the hearing, the claimant stated that he provided verifications in November and December 2009 of his unemployment compensation benefits where he received █████ per week and never told the department that his benefits were ending in February 2009. The claimant felt that he should not be required to pay money back for the department's error that resulted in him receiving benefits he was not entitled to because of his unemployment compensation benefits. (Department Exhibit 2-4)

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).

The department's manuals provide the following relevant policy statements and instructions for caseworkers:

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. PAM, Item 700, p. 1.

Definitions

The **Automated Recoupment System (ARS)** is part of CIMS that tracks all FIP, SDA and FAP OIs and payments, issues automated collection notices and triggers automated benefit reductions for action programs.

Overissuance Type identifies the cause of an overissuance.

Recoupment is a DHS action to identify and recover a benefit overissuance. PAM 700, p. 1.

PREVENTION OF OVERISSUANCES

All Programs

DHS must inform clients of their reporting responsibilities and act on the information reported within the standard of promptness. PAM 700, p. 2.

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.

Note: Department errors will be assigned to the provider or the client depending on the type of department error that occurred. See PAM 705 for examples.

Client Error

All Programs

A **client error** OI occurs when the client received more benefits than they were entitled to because the client gave incorrect or incomplete information to the department.

A client error also exists when the client's timely request for a hearing results in deletion of a DHS action, **and**

- . The hearing request is later withdrawn, **or**
- . SOAHR denies the hearing request, **or**
- . The client or administrative hearing representative fails to appear for the hearing and SOAHR gives DHS written instructions to proceed, **or**
- . The hearing decision upholds the department's actions. See PAM 600. PAM Item 700, p. 5.

OVERISSUANCE THRESHOLD

FIP, SDS, CDC and FAP Only

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

Client error OIs are not established if the OI amount is less than \$125, unless:

- the client or provider is active for the OI program, or
- the OI is a result of a Quality Control (QC) audit finding. PAM 700, p. 7.

DEPARTMENT ERROR EXCEPTIONS

FIP, SDA, CDC and FAP Only

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. The Reconciliation and Recoupment Section (RRS) in central office will recoup these types of overissuances.

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.

FAP Only

Do not recoup OIs caused by the following department errors:

- The group was certified in the wrong county.
- The local office failed to have the FAP group sign the application form. PAM 705, pp. 1-2.

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 PAM 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. PAM, Item 705, pp. 4-5.

FAP Only

The amount of EBT benefits received in the OI calculation is the **gross** (before Automated Recoupment (AR) deductions) amount issued for the benefit month.

FAP participation is obtained on CIMS on the IATP screen.

If the FAP budgetable income included FIP/SDA benefits, use the grant amount actually received in the OI month. Use the FIP benefit amount when FIP closed due to a penalty for non-cooperation with employment-related activity or child support. PAM 705, p. 6.

Determining Budgetable Income

FIP, SDA, CDC and FAP Only

If improper budgeting of income caused the OI, use actual income for the past OI month for that income source.

Convert income received weekly or every other week to a monthly amount. LOA2 will automatically convert based on answers to screen questions.

Exception: For FAP only, income is not converted from a wage match for any type of OI.

Any income properly budgeted in the issuance budget remains the same in that month's corrected budget.

FAP Only

If the FAP budgetable income included FIP/SDA benefits, use the grant amount actually received in the OI month. Use the FIP benefit amount when FIP closed due to a penalty for non-cooperation in an employment-related activity. PAM, Item 705, p. 6.

Overissuance Determination

When you receive the amount of MA payments, determine the OI amount.

For an OI due to unreported income or a change affecting need allowances:

- . If there would have been a spend-down or larger spend-down, the OI amount is the correct spend-down (minus any amount already met) **or** the amount of MA payments, whichever is less.
- . If there would have been a larger LTC, hospital or post-eligibility patient-pay amount, the OI amount is the difference between the correct and incorrect patient-pay amounts **or** the amount of MA payments, whichever is less.

For an OI due to **any other** reason, the OI amount is the amount of MA payments.

OIG Referral

The **minimum** OI amount for OIG referral is **\$500 unless** the local prosecutor sets a lower amount. OIG through regular channels informs affected local offices of lower amounts. PAM, Item 710, pp. 1-2.

Recoupment

Before you initiate recoupment, your supervisor or a designee must review the MA case. After review, notify the customer (or legal guardian) in writing that:

- FIA must seek recoupment, **but**
- refusal to repay will not cause denial of current or future MA if the customer is otherwise eligible.

If recoupment is agreed to, complete a DHS-4358B, Recoupment Agreement, have the customer/guardian sign it, then forward the original to the local office fiscal unit for collection. If the customer **refuses** to sign it, inform the fiscal unit in writing. PAM, Item 710, p. 2.

A delinquent OI balance can be referred to Treasury for collection **if**:

- the customer signed a FIA-4358B, **or**
- recoupment is court ordered. PAM, Item 710, p. 2.

In this case, the department due to a system error removed the claimant's unemployment compensation benefits that he was receiving in February 2009. The claimant's unemployment compensation benefits were automatically extended, but the system did not notify the department that the unemployment compensation benefits were continued. As a result, the claimant continued to receive his unemployment compensation benefits and the additional increase in FAP benefits, which resulted in an overissuance. The claimant received an overissuance in FAP benefits due to department error of \$368 for May 2009 where he received \$200 in error, but the correct amount was \$16 and in June 2009 where the claimant received \$200 in error, but the correct amount was \$16. However, the FAP overissuance is over \$125. Therefore, the department is required to recoup the department's error overissuance of \$368.

The department properly notified the claimant of the overissuance on December 15, 2009 and seeks to recoup the overissuance amount of \$368. Policy allows recoupment from current

benefits at the rate of 10% of the monthly allotment. The claimant is currently receiving \$16 per month in FAP benefits. The department is entitled to recoup from that amount. The entry of the department's entry of overissuance would cause a reduction in the claimant's FAP benefits from \$16 to \$6 per month. The recoupment will continue until all of the FAP overissuance is recovered.

The department has established that it was acting in compliance with department policy when it determined that the claimant received an overissuance of FAP benefits of \$368 for the months of May 2009 and June 2009 as a result of department error. The department is required to recoup the overissuance.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department's determination of department error and the proposed recoupment of the \$368 FAP overissuance were correct.

Accordingly, the department's action is **AFFIRMED**. The department may proceed with the recoupment action.

/s/ _____
Carmen G. Fahie
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: February 26, 2010

Date Mailed: February 26, 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.

CGF/vmc

cc:

