

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.: 201024601

Issue No.: 3002

Case No.: [REDACTED]

Load No.: [REDACTED]

Hearing Date:

April 1, 2010

Oakland 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 on April 1, 2010. The Claimant appeared and testified along with his wife, [REDACTED], [REDACTED], FIM appeared on behalf of the Department.

ISSUE

1. Whether the Department properly processed the Claimant's Food Assistance ("FAP") benefit increase?
2. Whether the Department is entitled to reduce Claimant's FAP benefits in order to recoup for a \$241.00 agency error FAP over-issuance for the period from 7/1/09 – 9/30/09?

FINDINGS OF FACT

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

1. The Claimant is an active FAP recipient since February, 2009.
2. Claimant and his wife testified that they notified the Department of shelter costs of \$350.00 in rent, including utilities in March of 2009.
3. The shelter expense was not included in Claimant's FAP budget until 9/1/09.
4. Claimant testified that his shelter expenses have not changed since March, 2009.
5. Claimant's daughter was born on July 20, 2009.
6. Claimant notified the Department by mail a couple days later of the baby's birth with verifications.
7. Claimant's FAP benefits were increased to \$526.00 per month effective 7/1/09 for one month for a group size of 2.
8. Claimant's FAP benefits were reduced back to \$157.00 per month effective 8/1/09 also for a group size of 2.
9. On 9/1/09, Claimant's FAP benefit increased to \$668.00 per month for one month. However, Claimant's daughter was included twice in the FAP group for a total group size of 4. (Exhibit 1, p. 2).
10. On 12/29/09, a notice of over-issuance was sent to Claimant indicating that he had been overpaid \$241.00 in FAP benefits for the periods of 7/1/09 and 9/30/09. (Exhibit 1, pp. 33-34).
11. On January 5, 2010, the Department received Claimant's request for a hearing.
12. The case worker(s) was not available to testify at the hearing.

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 Bridges Administrative Manual (“BAM”), the Bridges Eligibility Manual (“BEM”), and the Reference Tables (“RFT”).

Changes which result in an increase in the household’s benefits must be effective no later than the first allotment issued 10 days after the date the change was reported, provided any necessary verification was returned by the due date. A supplemental issuance may be necessary in some cases. If verification is returned late, the increase must affect the month after verification is returned. BEM 220, p. 5. A client has 90 calendar days from the date of the written notice of case action to request a hearing. For FAP only, a client may request a hearing disputing the current level of benefits at any time within the benefit period. BAM 600, p. 4.

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/BEM 550. Under 7 CFR 273.9, as amended, \$135.00 is deducted from the gross income of FAP recipients in determining FAP grants. Under 7 CFR 273.9 deductions for excess shelter are also made. PEM/BEM 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.

In the present case, Claimant contested his benefit amount before the close of the benefit period. Claimant and his wife testified credibly that they notified the Department of a shelter expense in March of 2009 and of the birth of their daughter at the end of June, 2009. The testimony was undisputed by the Department. Since the 10 days to effectuate the increase based on the birth of the baby would not have passed until the July benefits were already paid, the Department would have been required to effectuate the increase by August 1, 2009. Accordingly, the FAP budgets should have reflected a shelter deduction and group size of 2 for the months of April – July, 2009 and a shelter deduction and group size of 3 for the months August – September, 2009.

A. April, 2009 - July, 2009

According to the aforementioned policy on budgeting, Claimant's shelter costs equal $\$350.00 + \$33.00 = \$383.00$ (A). 50% of the income less deductions = $\$0.00$ (B). $(A - \$383) - (B - \$0) = \$383.00$. Claimant has a net monthly income of $\$0.00$. A household of two people with a net monthly income of $\$0.00$ is entitled to a monthly FAP grant of $\$367.00$ per month. RFT 260.

B. August, 2009 – September, 2009

According to the aforementioned policy on budgeting, Claimant's shelter costs equal $\$350.00 + \$33.00 = \$383.00$ (A). 50% of the income less deductions = $\$0.00$ (B). $(A - \$383) - (B - \$0) = \$383.00$. Claimant has a net monthly income of $\$0.00$. A household of three people with a net monthly income of $\$0.00$ is entitled to a monthly FAP grant of $\$526.00$ per month. RFT 260. As a result of these budget calculations, the Department has under issued FAP benefits as follows:

Months Occurred	Amount Issued	Correct Amount	Amount Under Issuance
April, 2009	\$157.00	\$367.00	\$210.00
May, 2009	\$157.00	\$367.00	\$210.00
June, 2009	\$157.00	\$367.00	\$210.00
July, 2009	\$526.00	\$367.00	-\$159.00
August, 2009	\$157.00	\$526.00	\$369.00
September, 2009	\$668.00	\$526.00	-\$142.00

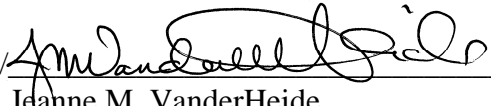
Therefore, Claimant has been under-issued a total of \$698.00 in FAP benefits. Accordingly, the Department's determination to recoup for an over-issuance of FAP benefits for 7/1/09 and 9/1/09 is REVERSED.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, determines that the Department is improperly recouping for a FAP over issuance.

Accordingly it is Ordered:

1. The Department's recoupment action effective 12/29/09 is REVERSED.
2. Any monies already recouped from Claimant shall be returned by the Department.
3. The Department shall recalculate Claimant's FAP benefits from 4/1/09 through 9/1/09 as set forth above and supplement the Claimant for any lost benefits he was entitled to receive.

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

Date Signed: April 13, 2010

Date Mailed: April 19, 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.

JV/hw

cc:

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