

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 201033565

Issue No: 3052

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

June 1, 2010

Macomb County DHS

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

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 hearing was held on June 1, 2010.

ISSUE

Was the claimant properly determined to have an over-issuance in the FAP program?

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 is a FAP recipient in Macomb County.
- (2) In October 2009, the Department's budget showed that claimant was due \$535 in FAP benefits.
- (3) Claimant reported to DHS that her rent was currently \$219.
- (4) This was mistakenly budgeted as \$850.
- (5) DHS discovered this error in April 2010.

- (6) The Department admitted that this was an agency error and initiated recoupment of FAP benefits.
- (7) On April 26, 2010, claimant requested a hearing, alleging that she should not have to pay the money back because she had fulfilled her obligations to the Department.
- (8) On June 1, 2010, a hearing was held before the Administrative Law Judge.
- (9) While the Department submitted budgets showing the amount of FAP benefits claimant received during the period in question, and submitted budgets showing the amount of FAP benefits claimant should currently receive, the Department never submitted any evidence to show the amount of the recoupment, nor any evidence that showed how that figure would be arrived at.

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).

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105.

A client/CDC provider error over-issuance (OI) occurs when the client received more benefits than they were entitled to because the client/CDC provider gave incorrect or incomplete information to the department. BAM 715. This includes failing to report a change. An agency error OI is caused by incorrect actions (including delayed or no action) by DHS or department processes. BAM 705. When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the over-issuance. BAM 700.

Agency error OI's are not pursued if the estimated OI amount is less than \$125 per program. BAM 700.

In the current case, the Department contends that while the claimant had reported her housing expenses as required by policy, this income was incorrectly budgeted by the Department, and claimant was issued more FAP benefits than she was legitimately entitled to; these benefits need to be recouped. Claimant contends that she reported her housing expenses and should not have to pay back the over-issuance because of a caseworker mistake.

Unfortunately, even if the claimant did report, and the Department made a mistake, this would not normally change the recoupment prospects. BAM 700 states that the Department must pursue any OI that was the result of agency error if the amount is above \$125. However, the Department has not submitted evidence that shows that the over-issuance in question is greater than the recoupment threshold, nor did it submit any evidence to show how that over-issuance number was arrived at.

While the Department has submitted satisfactory budgets that show the amount of benefits the claimant was paid during the time period in question, and while they have submitted satisfactory budgets showing the amount of benefits the claimant should

currently be paid, the Department failed to submit budgets or evidence from the time period in question showing the amount of benefits the claimant should have been paid, and that the difference between those amounts would result in an over-issuance. Furthermore, the Department has failed to present any evidence as to the recoupment amount; as of this writing, the undersigned has no idea as to the amount the Department believes they are entitled to recoup. Therefore, the Department has not met their burden of proof in showing that the claimant was over-issued FAP benefits.

While the undersigned freely admits that a lower housing expense would normally result in the lowering of FAP benefits, this may not always be the case. The Department was under the responsibility to show the Administrative Law Judge that the claimant should have received a different, lower, amount of FAP benefits during the time period in question; they did not, nor did they state an over-issuance amount.

Therefore, as there is no evidence showing that the claimant was over-issued benefits, the undersigned must hold that the claimant was not over-issued benefits, and therefore, recoupment must be denied.

With regard to claimant's current FAP benefit amount, the undersigned has reviewed the current FAP budget and could find no errors. Therefore, the undersigned holds that the claimant's current FAP benefit amount is correct.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department has not satisfactorily shown that the claimant was the recipient of an over-issuance of FAP benefits. Therefore, the Department's decision to initiate recoupment of claimant's alleged FAP over-issuance

was incorrect. The Department's decision to award claimant a current FAP benefit amount of \$311 is correct.

Accordingly, the Department's decision in the above stated matter is, hereby, **AFFIRMED IN PART and REVERSED IN PART.**

Recoupment of FAP benefits is **DENIED.**

The Department is **ORDERED** to supplement to the claimant any FAP benefits already recouped as a result of the above stated matter.



Robert J. Chavez
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 09/09/10

Date Mailed: 09/13/10

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.

RJC/dj

cc:

