

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

IN THE MATTER:



Reg. No.: 2010-39944
2010-40917
Issue No.: 3003, 3020
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: August 11, 2010
Macomb County DHS (36)

ADMINISTRATIVE LAW JUDGE: Linda Steadley Schwarb

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 August 11, 2010. Claimant appeared and testified.

ISSUES

1. Did the Department of Human Services (DHS or department) properly calculate claimant's current Food Assistance Program (FAP) allotment?
2. Does the department properly plan to recoup an overissuance of FAP 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 is an ongoing recipient of FAP benefits in a group of one.
2. In May of 2010, the department reviewed claimant's ongoing eligibility for FAP benefits.
3. Claimant receives Retirement, Survivors' and Disability Insurance (RSDI) in the gross amount of \$1,710.50 per month. (Department Exhibit #1.)
4. On a monthly basis, \$96.50 is deducted from claimant's RSDI for health insurance premiums. (Department Exhibit #1.)

5. Claimant is purchasing her home on land contract and pays \$1,000 per month on the land contract as well as \$300 per month for tax payments on the home. (Department Exhibit #2.)
6. Claimant pays \$1,195 per year to insure her home. (Department Exhibit #2.)
7. On May 20, 2010, the department notified claimant that, effective July 1, 2010, her FAP allotment would decrease to \$104 per month.
8. On July 1, 2010, claimant's FAP allotment decreased to \$104 per month.
9. On June 10, 2010, claimant filed a hearing request to protest the reduction of her FAP allotment.
10. On or about August of 2009, claimant was receiving \$200 per month in FAP benefits.
11. Due to a decrease in claimant's monthly shelter expense, on September 2, 2009, the department notified claimant that her monthly FAP allotment would decrease to \$104 per month.
12. On September 4, 2009, claimant filed a timely hearing request to protest the department's proposed negative action. Claimant requested that her current FAP allotment continue until her hearing was decided. (Department Exhibit #1.)
13. Thereafter, the department deleted its proposed negative action pending the outcome of the requested hearing and claimant's monthly FAP allotment continued at \$200 per month.
14. On October 1, 2009, the department received a DHS-18A, Hearing Request Withdrawal, executed by claimant indicating "I just don't want the hearing now." (Department Exhibit #2.)
15. Thereafter, the department failed to decrease claimant's monthly FAP allotment from \$200 per month to \$104 per month.
16. The department did not discover its error until May of 2010.
17. As a result of claimant's request for hearing and subsequent withdrawal of the request, claimant was overissued \$96 in FAP benefits for the month of October of 2009.
18. As a result of department error, claimant was overissued \$768 in FAP benefits from November of 2009 through June of 2010.

19. On May 22, 2010, the department notified claimant of the overissuances and its intent to recoup the overissuances.
20. On June 16, 2010, the department received claimant's request for hearing to protest the plan to recoup the FAP overissuances.
21. Thereafter, the department deleted its proposed recoupment activities pending the outcome of the instant hearing.

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 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 (BAM), the Program Eligibility Manual (BEM) and the Program Reference Manual (PRM).

When determining eligibility for FAP benefits, the total income from all FAP group members must be evaluated. All earned and unearned income from each group member must be included unless specifically excluded by law. BEM Item 500. The FAP program requires a deduction from earned income of 20% and a deduction for the cost of child care when necessary to enable a FAP household member to work. A standard deduction from income of \$132 is allowed for each household. See RFT Item 255. Certain non-reimbursable medical expenses above \$35 per month may be deducted for senior/disabled/veteran FAP group members. Another deduction from income is provided if monthly shelter costs for the FAP group are in excess of 50% of the group's income after all of the other deductions have been allowed (up to a maximum of \$459 for non-senior/disabled/veteran households). BEM Items 500 and 554; RFT 255; 7 CFR 273.2.

In this case, the undersigned Administrative Law Judge has reviewed the FAP budgets and finds that the department properly computed claimant's FAP group net income. Federal regulations at 7 CFR 273.10 provide standards for the amount of FAP group benefits. The department, in compliance with federal regulations, had prepared issuance tables which are set forth at RFT 260. The issuance tables provide that an FAP group with the size and net income of claimant's group is eligible for an FAP allotment of \$104. Accordingly, the department's determination as to claimant's current FAP allotment must be upheld.

Relevant departmental policy in this matter with regard to recoupment of overissuances is as follows:

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the overissuance (OI). BAM Item 700, p. 1.

An agency error OI is caused by incorrect action (including delayed or no action) by DHS or DIT staff or department processes. BAM Item 700, p. 3.

The agency error threshold was lowered to \$125 from \$500 with a retroactive effective date of August 1, 2008. BAM 700, p. 4.

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 any of:**

- The hearing request is later withdrawn.

BAM Item 700, p. 5

Agency error OIs are not pursued if the estimated OI amount is less than \$125 per program.

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

- The client or provider is active for the OI program.
- The OI is a result of a quality control (QC) audit finding.

BAM Item 700, p. 7

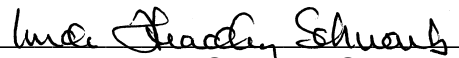
In this case, as a result of claimant's request for hearing and subsequent withdrawal of the hearing request, claimant was overissued \$96 in FAP benefits for the month of October of 2009. Thereafter, as a result of department error, claimant was overissued \$768 in FAP benefits from November of 2009 through June of 2010. Per policy, the department is required to recoup this overissuance. Accordingly, the department properly proposed to initiate administrative recoupment of claimant's overissued FAP benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that

1. The Department of Human Services properly calculated claimant's current Food Assistance Program allotment and,
2. The Department of Human Services properly proposes to initiate recoupment of overissued Food Assistance Program benefits.

Accordingly, the department's action and proposed action in this matter are hereby affirmed.


Linda Steadley Schwarb
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: August 18, 2010

Date Mailed: August 18, 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.

LSS/pf

cc:

