

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

IN THE MATTER OF:

[REDACTED]

Reg No: 2010 44759
Issue No: 1030
Case No: [REDACTED]
Hearing Date:
December 6, 2010
Wayne County DHS (19)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 from Detroit, Michigan on December 6, 2010. The Claimant appeared and testified at the hearing. Gwen Davis, FIM and Carol Zydowski, FIS appeared on behalf of the Department.

ISSUE

Whether the Department is entitled to a recoupment for an overissuance to Claimant's FIP (Cash Assistance) benefits in the amount of \$340.00.

FINDINGS OF FACT

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

1. The Claimant was an active FIP recipient.
2. The Department requested a recoupment and over issuance for FIP benefits the Claimant improperly received due to an Agency error.

3. The Department sought a recoupment but did not provide a budget demonstrating the amount of FIP benefits the Claimant should have received for September 2009 and October 2009.
4. The Department is not entitled to a recoupment based upon the proofs submitted at the hearing.
5. The Department was given an opportunity to submit a budget demonstrating the correct amount of FIP benefits the Claimant should have received for September 2009 and October 2009, the day after the hearing, but was unable to do so.
6. The Claimant received \$396.49 gross based upon the pay stub for September 22, 2009. The Department did not have both the Claimant's pay stubs for September 2009.
7. The claimant did not dispute the amount of the September 22, 2009 pay stub.
8. The Department sought recoupment for the period September 1, 2009 through October 31, 2009.
9. The Claimant received \$252 in FIP benefits for the month of September 2009 and October 2009.
10. The Notice of Over issuance, dated December 11, 2009, stated that the amount of the over issuance was \$340. This amount was determined based on an over issuance of \$141 for September 2009 and \$199 for October 2009.
11. The Claimant requested a hearing protesting the Department's recoupment for overpayment of FIP benefits, which was received by the Department on December 17, 2009.

CONCLUSIONS OF LAW

The Family Independence Program ("FIP") was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 USC 601, *et seq.* The Department of Human Services administers the FIP program pursuant to MCL 400.10, *et seq* and MAC R 400.3101-3131. The FIP program replaced the Aid to Dependent Children ("ADC") program effective October 1, 1996.

Department policies are found in the Bridges Administrative Manual (“BAM”), the Bridges Eligibility Manual (“BEM”), and the Program Reference Manual (“PRM”).

In this case, the Department seeks recoupment of an over issuance of FAP benefits in the amount of \$340 due to the Claimant’s total income not being included in the Claimant’s FIP budget. The Budget submitted did not include the Claimant’s total income, and the over issuance was due to agency error. Further, the Department did not provide any evidence of the actual FIP benefit amounts the Claimant should have received for the period in question and thus did not establish the basis for the over issuance amount.

Because the Department has not established the over issuance and consequently, its right to recoupment, its request must be denied. Under BAM 720 the amount of the over issuance is the amount of benefits the group actually received minus the amount the group was eligible to receive. The Department did not present this information or the amount of benefits the claimant was actually entitled to receive. The Notice of Over Issuance drew a conclusion of over issuance but did not demonstrate the basis for the conclusions drawn and thus the Department did not meet the required burden of proof.

An over issuance (“OI”) occurs when a client group receives more benefits than they are entitled to receive. BAM 700, p. 1. A claim is the resulting debt created by the over issuance of benefits (OI). Id. Recoupment is an action to identify and recover a benefit. Id. The Department must take reasonable steps to promptly correct any overpayment of public assistance benefits, whether due to Department or client error. BAMs 700, 705, 715, and 725. An agency error OI is caused by incorrect actions by

DHS, DIT staff, or Department processes. BAM 705, p. 1. In general, agency error Ols is not pursued if OI amount is under \$500.00 per program. BAM 705, pp. 1-3. The policy officially changed to allow recoupment under \$125.00, effective January 1, 2010.

In the subject case, because the record does not substantiate the amount of the over issuance, the Department is not entitled to recoup the FIP benefits the Claimant allegedly should not have received.

The undersigned has reviewed the file, and the information submitted, and cannot make a factual determination that there was a FIP over-issuance. Accordingly, the Department's over issuance and recoupment action determination is REVERSED.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the Department did not substantiate, by the evidence it presented, that an over issuance of FIP benefits occurred and thus is not entitled to a recoupment of the Claimant's FIP benefits.

It is therefore ORDERED that the Department's determination, that there was an over issuance of FIP benefits to the Claimant and that the Department is entitled to a recoupment of FIP benefits, is REVERSED.



Lynn M. Ferris
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 01/21/11

Date Mailed: 01/21/11

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 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing 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.

LMF/dj

cc:

