

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.: 2010-9538
Issue No.: 3003/3020
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
January 14, 2010
Wayne County DHS (49)

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

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 held on January 14, 2010. The Claimant appeared and testified. [REDACTED] FIM and [REDACTED] ES appeared on behalf of the Department.

ISSUE

Has the Department properly determined Claimant's Food Assistance 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 applied for FAP July 2, 2009.
- (2) The Department determined Claimant's FAP benefit to be \$646 for July 2009 with continuing benefits of \$668 per month.
- (3) In October 2009 the Department determined that the correct amount of FAP benefit was \$350 per month and that an overissuance had occurred for the months of July, August,

September and October 2009. The overissuance was the result of Department error, when the Department failed to include Claimant's income when calculating Claimant's benefit amount.

- (4) Claimant has income of \$1556 per month consisting of unemployment benefits.
- (5) Claimant's shelter expense is \$1795.
- (6) Claimant requested a hearing on November 13, 2009 contesting the determination of her FAP benefits and the recoupment.

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 Program Reference Manual ("PRM").

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the over issuance (OI). BAM 700, p. 1. DHS must inform clients of their reporting responsibilities and prevent OIs by following BAM 105 requirements informing the client of the requirement to promptly notify DHS of all changes in circumstances within 10 days. BAM 700, BAM 105. Incorrect, late reported or omitted information causing an OI can result in cash repayment or benefit reduction.

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. BEM 550. Under 7 CFR 273.9, as amended, \$135.00 is deducted from the gross income of FAP recipients in determining FAP grants. BEM 505.

Under 7 CFR 273.9, as amended, \$144 is deducted from the gross income of FAP recipients in determining FAP grants. Under 7 CFR 273.9 deductions for excess shelter expenses are also made when shelter expenses in excess of 50 percent of the household's income after other specified deductions have been allowed. A standard deduction for telephone services may also be allowed. BEM 554.

In the present case, according to the aforementioned policy on budgeting, Claimant has a net monthly income of \$953. This was obtained by subtracting the standard deduction of \$144 from the gross income of \$1556. Claimant's monthly gross income was calculated by multiplying her weekly benefit \$362 by 4.3 which equals \$1556. BEM 505

Claimant qualified for an excess shelter deduction of \$459 as her shelter expenses of \$1795 (\$1240 housing expense plus \$555 utility) was in excess of \$778 (50 percent of \$1520, income after prior deductions were made.) $1556 - 144 - 459 = 953$

The amount of a monthly food assistance allotment is established by regulations a 7 CFR 273.10. A household of four people with a net monthly income of \$953 is entitled to a monthly FAP grant of \$382 per month. RFT 260. The Department's calculation of \$349 per month was incorrect.

At hearing, Claimant questioned the fairness of recouping the overissuance when it was the result of Department error. However, Department policy is very clear that overissuances over \$500 must be recouped even when they are the result of agency error. BAM 705

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law decides that the Department was incorrect in the determination of FAP benefits, and it is ORDERED that the Department's decision in this regard be and is hereby REVERSED. The Department shall re-budget and provide increased benefits retroactive to July 1, 2009. The Department shall also recalculate the amount of the overissuance that Claimant received in accordance with this decision.



Aaron McClintic
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 3/24/2010

Date Mailed: 3/24/2010

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.

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