

STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

Shawn Phillips  
628 Webster Street  
Traverse City, MI 49686

Registration. No: 2011-30629  
Issue No: 3020; 4060  
Case No: 101122335  
Hearing Date: July 7, 2011  
Grand Traverse County DHS

Administrative Law Judge: Mark A. Meyer

**HEARING DECISION**

This matter is before the undersigned Administrative Law Judge in accordance with 7 CFR 273.18, 45 CFR 233.20(a)(13), MCL 400.9, MCL 400.37, MCL 400.43(a), MCL 24.201, *et seq.*, and 1999 AC, R 400.941, upon a hearing request by the Department of Human Services (the Department) to establish a debt based on an overissuance of benefits to Respondent. Following due notice mailed to Respondent, a hearing was held on July 7 2011. Respondent failed to appear.<sup>1</sup> The Department of Human Services (the Department) was represented by agency personnel.

**ISSUE**

In dispute was whether Respondent received an overissuance of Food Assistance Program (FAP) benefits, which entitled the Department to recoupment.

**FINDINGS OF FACT**

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

1. At all times relevant to this matter, Respondent was receiving FAP benefits. (Department's Exhibits D-2; D-6.)
2. On May 15, 2009, the Department received verification of Respondent's employment; this information demonstrated that she was receiving \$7.50 per hour and working approximately 35-38 hours per week. (Department's Exhibit D-7.)

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<sup>1</sup> There was nothing in the record indicating that the notice of hearing in this matter was returned to the Department of Human Services (the Department), or to the Michigan Administrative Hearing System, by the United States Postal Service as undeliverable. The hearing thus proceeded in Claimant's absence. See Bridges Administrative Manual (BAM) 725, p. 18.

3. The Department failed, however, to include this earned income when it computed Respondent's FAP benefits budget. (Department's Exhibit D-2; Department's hearing summary, dated April 26, 2011.)
4. Because of the agency's error, Respondent received \$200.00 per month in FAP benefits for the months of July and August 2009 – the period in issue. (Department's Exhibits D-2; D-3; D-6.)
5. In April 2011, the Department obtained the amount of Respondent's actual employment income for the months of July and August 2009. This information demonstrated that her earned income during that time was \$1,655.00 per month. (Department's Exhibits D-3; D-4.)
6. Using this verified monthly earned income, the Department recomputed Respondent's FAP benefits budget for the months of July and August 2009, and determined that she was only eligible to receive \$16.00 per month during that time period. (Department's Exhibit D-3.)
7. On April 14, 2011, the Department notified Respondent that, due to agency error, she had been overissued FAP benefits for the months of July and August 2009 in an amount totaling \$368.00. (Department's Exhibit D-2.)
8. From the Department's notice of overissuance, Claimant filed a request for hearing. (Claimant's hearing request, dated April 24, 2011.)

### **CONCLUSIONS OF LAW**

FAP – formerly known as the Food Stamp Program – was established by the Food Stamp Act of 1977, 7 USC 2011, *et seq.*, as amended, and is implemented through federal regulations found in the Code of Federal Regulations (CFR), 7 CFR 273.1 *et seq.* The Department administers the FAP under MCL 400.10, *et seq.*, and Rules 400.3001 through 400.3015. Agency policies pertaining to the FAP for the period in issue are found in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT). The goal of the FAP is to ensure sound nutrition among children and adults. BEM 230B, p. 1.

In completing a FAP budget to determine eligibility or benefit level, the entire amount of countable and available income, both earned and unearned, is used. BEM 505, p. 2. Countable income is defined as "income remaining after applying [applicable agency policy]." BEM 500, p 3; BEM 505, p. 1. All income that is not specifically excluded is deemed countable income. BEM 500, p. 1.

Earned income means income received from another person or organization, or from self-employment, for duties that were performed for compensation or profit. BEM 500,

p. 3. Wages are considered earned income for FAP benefits budgeting purposes. BEM 501, p.5. Unearned income is all income that is not earned. BEM 500, p. 3.

The Department determines FAP eligibility and benefit amount using: (1) actual income (income that was already received), and (2) prospective income (income amounts not received but expected). BEM 505, p. 1.

Clients receiving FAP benefits are responsible for reporting changes in circumstances that have the potential for affecting eligibility or benefit amount. BAM 105, p. 7. This includes the proper and correct reporting of income, both earned and unearned. BAM 105, p. 7. Claimant did so here, but the Department failed to include the reported earned income when it computed her FAP benefits budget for July and August 2009.

When the Department is made aware of, or the client reports, a change in income that will affect eligibility or benefit level, a new FAP budget must be completed. BEM 505, p.7. After discovering its error in the present matter, the agency obtained verified employment information for the period in issue and recomputed Claimant's FAP budget to include the proper amount of earned income. After doing so, it was determined that Respondent received an overissuance of FAP benefits in July and August 2009 totaling \$368.00. This amount was based on her receipt of \$200.00 in benefits in each of these months when, based on her actual earned income, she was only entitled to \$16.00 per month. ( $\$200.00 - \$16.00 = \$184.00 \times 2 = \$368.00$ .)

An overissuance is the amount of benefits issued to a client in excess of what he or she was entitled to receive. BAM 700, p. 1; see also BAM 705, p. 5. When this occurs, the Department must attempt to recoup the overissuance. BAM 700, p. 1.

There are agency errors and client errors that result in overissuances. An agency error occurs when incorrect action is taken by the Department. BAM 700, p. 3; BAM 705, p. 1. A client error occurs when the client received more benefits than he or she was entitled to because the client provided incorrect or incomplete information to the Department. BAM 700, p. 5. The threshold for pursuing recoupment of an overissuance, whether the result of Department or client error, is \$125.00 or more. BAM 700, pp 4. 7; BAM 705, p. 1.

Generally, when the client is currently in an active FAP benefits case, the Department will seek to recoup a determined overissuance from those benefits. See BAM 705, pp. 8-9; BAM 715, pp. 8-9. In those situations, it is the client who must file a timely request for hearing to contest the recoupment action. BAM 705, pp. 8-9; BAM 715, pp. 8-9; BAM 725, p.15. But, when an overissuance is determined and the client is not currently within an active case, the Department must request a hearing to establish the outstanding debt. See BAM 705, p. 9; BAM 715, p. 9; BAM 725, pp. 14-15.

Overissuances on active programs are repaid by:

- Lump sum cash payments.

- Monthly cash payments (when court ordered).
- Administrative recoupment (benefit reduction).

[BAM 725, p. 4.]

Overissuance balances on inactive cases must be repaid by lump sum or monthly cash payments unless collection is suspended. BAM 725, p. 7.

Repayment of an overissuance is the responsibility of:

- Anyone who was an eligible, disqualified, or other adult in the program group at the time the overissuance occurred.
- A FAP authorized representative if they had any part in creating the FAP overissuance. [BAM 725, p. 1.]

Here, Respondent failed to appear at hearing. Her argument, as stated in her request for hearing, was effectively that she should not be held responsible for an overissuance of FAP benefits due to agency error. While Respondent's contention in this matter is certainly understandable, administrative adjudication is an exercise of executive rather than judicial power, and the granting of equitable remedies is restricted. *Michigan Mutual Liability Co v Baker*, 295 Mich 237, 242-243; 294 NW 168 (1940). In the absence of an express legislative conferral of authority, an administrative agency generally lacks powers grounded in equity. *Delke v Scheuren*, 185 Mich App 326, 332; 460 NW2d 324 (1990), citing *Auto-Owners Ins Co v Elchuk*, 103 Mich App 542; 303 NW2d 35 (1981).

The administrative forum in the present matter lacks the equitable powers to determine issues of fairness. Furthermore, the Department is required to pursue collection of a FAP benefits overissuance, regardless of the party in error. BAM 700, p. 1.

Here, Respondent did not dispute the amount of earned income used by the Department in making this determination. Likewise, she did not dispute the budgeting process used by the agency to determine the overissuance amount. Finally, there was no evidence presented by either party indicating that the agency's overissuance computation was in error, incorrect, or otherwise improper.

Conversely, the Department provided credible evidence reasonably establishing that Respondent had earned income from employment of \$1,655.00 per month for the period in issue. Moreover, the Department sufficiently demonstrated that after the inclusion of this income into Respondent's FAP budget, she was entitled to receive only \$16.00, not \$200.00, per month in July and August 2009. The Department is therefore entitled to recoup the difference.

**DECISION AND ORDER**

Based on the above findings of fact and conclusions of law, the Administrative Law Judge decides that Respondent received an overissuance of FAP benefits for the time period July 1, 2009, through August 31, 2009.

Therefore, the Department is entitled to recoup the FAP overissuance from Respondent in the amount of \$368.00.

It is SO ORDERED.

/s/ \_\_\_\_\_  
Mark A. Meyer  
Administrative Law Judge  
for Maura D. Corrigan, Director  
Department of Human Services

Date Signed: 7/20/11

Date Mailed: 7/21/11

NOTICE: Respondent may appeal this decision and order within 60 days of the above mailing date. The appeal may be made to the circuit court for the county in which Respondent resides or has his or her principal place of business in this State, or in the circuit court for Ingham County. Administrative Hearings, on its own motion, or on request of a party within 60 days of the above mailing date, may order a rehearing.

MAM/sc

cc: Shawn Phillips  
Grand Traverse County DHS  
R. Gruber  
M. Holden  
D. DeCaire  
M. A. Meyer  
Administrative Hearings