

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.: 20113463
Issue No.: 3052
Case No.: [REDACTED]
Load No. [REDACTED]
Hearing Date: November 29, 2010
Office: Macomb County DHS (12)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 November 29, 2010. The claimant appeared and testified. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, appeared and testified.

ISSUE

Whether DHS established a basis to recoup \$493 in allegedly over-issued Food Assistance Program (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 applied for FAP benefits in approximately 12/2008.
2. At the time of Claimant's application, Claimant was temporarily laid-off from her employment.
3. Claimant's lay-off status was indicated in her Assistance Application.
4. In approximately 1/2009, Claimant's lay-off ended and Claimant returned to her employment.
5. Claimant reported her return to employment to DHS in approximately 1/2009.

6. In approximately 4/2009, DHS processed Claimant's FAP benefit application and issued FAP benefits for Claimant from 4/2009-6/2009 based on \$0/month in employment income.
7. From 4/2009-6/2009, DHS issued Claimant a total of \$726 in FAP benefits.
8. Had Claimant's actual employment income from 4/2009-6/2009 been budgeted for each benefit month from 4/2209-6/2009, Claimant would have received a total of \$233 in FAP benefits.
9. Claimant was over-issued \$493 in FAP benefits from 4/2009-6/2009.
10. On an unspecified date, DHS mailed notice of an attempt to recoup the \$493 in FAP benefits.
11. On 10/25/10 Claimant requested a hearing disputing the attempted recoupment of FAP benefits

CONCLUSIONS OF LAW

The Food Assistance Program (formerly known as the Food Stamp 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 (formerly known as the Family Independence Agency) 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 Reference Tables Manual (RFT). At the time of the alleged over-issuance in FAP benefits, DHS policies were found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) 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). PAM 700 at 1. An OI is the amount of benefits issued to the benefit group in excess of what they were eligible to receive. *Id.* Recoupment is a DHS action to identify and recover a benefit OI. *Id.*

An OI caused by client error occurs when the client received more benefits than they were entitled to because the client gave incorrect or incomplete information to DHS. *Id.* at 5. Note that an over-issuance of benefits caused by client error is not an allegation that the misreporting was done intentionally. OIs caused by client-error are not established if the OI amount is less than \$125. *Id.* at 7.

An agency error OI is caused by incorrect actions (including delayed or no action) by DHS or department processes. PAM 705 at 1. The DHS policy in effect in 6/2009, stated that agency error OIs are not pursued if the estimated OI amount is less than \$500 per program. *Id.*

A DHS policy update dated 3/1/10 changed the agency error over-issuance threshold amount from \$500 to \$125. BPB 2010-007. This policy is currently reiterated within a DHS policy section titled Agency Error Over-issuances. BAM 705 at 1 and 2. The amended policy specifically affects future benefit recoupment and retroactive recoupment back to 8/1/08. If this policy change is recognized by the undersigned, then DHS would appear to have properly sought to recoup Claimant's FAP benefits as the over-issued amount in issue (\$493) would exceed the amended \$125 threshold.

The retroactive policy change is akin to an ex post facto law. An ex post facto law retroactively changes the legal consequences of actions taken prior to the enactment of the law. For example, Congress passes a law making uttering a profanity a crime; the law retroactively applied to one year before the law was in effect. Thus, anybody who used profanity in the year prior to the effective date of the law could be prosecuted for a crime. In the United States, ex post facto laws are explicitly prohibited by the United States Constitution. U.S. Const. art. I, § 9, cl. 3. DHS is attempting to recoup over-issued benefits based on current policy amending prior policy knowing that the recoupment would not be authorized based on the policy in effect at the time of the over-issuance. Though the issue in the present case involves administrative policy, not federal law, the same principles of fairness should apply. It is found that the DHS policy in effect as of 6/2009 is the appropriate policy to determine whether DHS is entitled to recoup Claimant's over-issued FAP benefits based on agency error.

The present case involves an alleged over-issuance of FAP benefits totaling \$493. DHS contends that the OI was client caused; Claimant contends that the OI was agency caused. As the OI amount exceeds the minimum threshold amount for recoupment of client caused OIs, but not the threshold amount for agency caused OIs, determining which party caused the error is a pivotal issue.

Claimant credibly testified that after returning to work following her lay-off that she reported the return to work to her DHS specialist. DHS was unable to provide any evidence to refute Claimant's testimony. Based on the submitted evidence, it can only be found that Claimant timely and accurately reported to DHS that she returned to work. Accordingly, it must also be found that it was the error of DHS that caused an over-issuance of FAP benefits.

Again, it was not disputed that the over-issuance of FAP benefits was \$493. As stated above, the undersigned recognizes DHS regulations in effect on 6/2009 to be the guiding standard; those regulations stated that agency errors may only be recouped if

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the amount to be recouped exceeds \$500 per program. Accordingly, DHS may not pursue recoupment of over-issued FAP benefits from Claimant for the months 4/2009-6/2009 as the total over-issued amount does not exceed the minimum amount required for recoupment.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS improperly pursued recoupment of \$493 in over-issued FAP benefits from 4/2009-6/2009 as the total amount of over-issued benefits is not pursuable for over-issuances caused by agency error. The actions taken by DHS are REVERSED.

Christian Gardocki

Christian Gardocki
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: 12/8/2010

Date Mailed: 12/8/2010

NOTICE: The law provides that within 60 days from the mailing date of the above hearing Decision the Respondent may appeal it to the circuit court for the county in which he/she 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 mailing date of this Hearing Decision, may order a rehearing.

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