

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

IN THE MATTER OF:

[REDACTED]

Reg No. 201148659
Issue No. 3052
Case No. [REDACTED]
Hearing Date: September 15, 2011
District: Macomb County DHS (20)

ADMINISTRATIVE LAW JUDGE: Andrea J. Bradley

HEARING DECISION

This matter is before the undersigned Administrative Law Judge upon the Claimant's request for a hearing made pursuant to Michigan Compiled Laws 400.9 and Michigan Compiled Laws 400.37, which govern the administrative hearing and appeal process. After due notice, a telephone hearing was conducted from Detroit, Michigan on Thursday September 15, 2011. The Claimant appeared and testified along with her witness [REDACTED]. Ms. Angela, Eligibility Specialist, and Ms. Peach, Recoupment Specialist, appeared and testified on behalf of the Department of Human Services (Department).

ISSUES

Whether the Department acted in accordance with Department policy when it denied the Claimant's application for Food Assistance Program (FAP) benefits based on excess income.

Whether the Claimant received an over-issuance (OI) of FAP benefits which the Department is entitled to recoup?

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 is a foster parent and provides a home for foster child.
2. The Claimant has a monthly gross income of \$3644.00.

3. In August of 2010, the Department erroneously approved FAP benefits for the foster child only as a group of one, and the Claimant was not included in the FAP group.
4. Foster care payments in the amount of \$1400 per month are unearned income for the foster child.
5. At redetermination, the Department determined that policy requires the Claimant to be included in the FAP group and the Claimant can then choose to include the foster child in the FAP group.
6. At redetermination, the Department attempted to add the Claimant to the FAP group and used the monthly income amount of \$5044 to determine FAP eligibility.
7. The Department used the FAP monthly income limit for a group size of one, which is \$1806.
8. On July 19, 2011, the Department notified the Claimant that it closed the foster child's FAP case, because if the Claimant was added to the FAP group, the Claimant would be over the income limit.
9. On July 25, 2011, the Department sent the Claimant a notice of OI for the period of August 1, 2010 to July 31, 2011 in the amount of \$2277, which reflected the FAP benefits received by the foster child for that period of OI.
10. The Claimant was not a member of the FAP group for the period of August 1, 2010 to July 31, 2011.
11. On August 5, 2011, the Department received the Claimant's timely written request for 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 of Human Services (formerly known as the Family Independence Agency) administers the FAP program pursuant to CML 400.10 *et seq.*, and Michigan Administrative Code (MAC) R 400.3001-3015. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Table (RFT).

Excess Income

The Department policy governing the income limits for FAP benefits is found at RFT 255. In this case, the Department used the gross monthly income limit for one person

when it ran the budget, which is \$1806.00. RFT 255. The income limit for a FAP group size of two is \$2,430. RFT 255. In FAP benefit cases, the Department must count child foster care payments as the unearned income of the foster child when that foster child is included in the FAP group. BEM 503. The FAP group may choose to include or exclude a foster adult who lives with the group. BEM 212. If the FAP group chooses to exclude the foster child, the foster care payment is not income to the group. BEM 212.

The Department testified, and there was no dispute, that the Claimant's countable monthly income is \$3,644.00. This amount excludes the monthly child foster care payment in the amount of \$1400.00. If calculated based on a group size of one, the Department would have correctly determined that the Claimant is over the income limit. In the event the Claimant chose to include the foster child in the FAP group, then the foster care payments would be included as income. Under these facts, the Claimant's countable income would be \$5044, which exceeds the income limit for a group size of two. Accordingly the Department correctly determined that the Claimant is not eligible for FAP benefits either including or excluding the foster child in the FAP group. The Department is also correct in determining that it erred in opening the FAP group in the name of the foster child only and that Department policy requires the Claimant to be a member of the FAP group. To that end, the Department acted in accordance with Department policy when it closed the foster child's case for FAP benefits, and the action taken by the Department is upheld.

Recoupment

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700. An agency error OI is caused by incorrect action by department staff or agency processes. BAM 700. The OI period begins the first month when the benefit issuance exceeds the amount allowed by policy or 12 months before the discovery date whichever is later. BAM 705. The amount of the OI is the benefit amount the group actually received minus the amount the group was eligible to receive. BAM 705. The Department will seek recoupment of benefit OI from any adult who was a group member when the OI occurred. MAC 400.3131. If the overpaid family independence program group did not include an eligible or disqualified adult at the time of the OI, then a collection action will not be initiated unless the debt was established through court action or by obtaining a signed repayment agreement. MAC 400.3131.

There is no dispute that an agency error occurred, which caused benefits to be issued to a foster child without first adding the foster parent to the group and determining eligibility of the foster parent. Further indisputable is that the Claimant was not included in the FAP group, but had she been included, her unearned income would have rendered her ineligible for FAP benefits. Since the foster child was never entitled to benefits on her own and a FAP group that included the parent would have been ineligible, and OI exists for the entire period that benefits were paid to the foster child.

The Department has provided documentary evidence in support of its proposal to recoup \$2,277.00 from the Claimant. During the hearing, the Claimant testified that her income at the time of the foster child's application was less than that at redetermination. Based on that testimony, the Department agreed to a settlement, wherein the Claimant would be allowed thirty (30) days from the date of hearing to submit income information for the period of OI, and the Department would agree to recalculate the OI based on that income information.

Subsequent to the hearing, and upon further review of the applicable law and policies, it is determined that the recoupment issue in this case is dictated by Department policy and the MAC. Specifically, the Claimant was not a member of the FAP group during the period of FAP benefit OI. Based on Department policy and the MAC, the Department has no authority to seek recoupment from the Claimant for the FAP benefits issued to the foster child when the Claimant was not a part of the eligible group. Accordingly, the Department's proposal to recoup an OI from the Claimant for FAP benefits for the period of August 1, 2010 to July 31, 2011 is REVERSED.


DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the Department established it acted in accordance with Department policy when it closed the foster child's case for FAP benefits based on Department policy requiring the foster parent to be included in the FAP group, and then determining that the foster parent would be ineligible for FAP benefits based on excess income.

The Administrative Law Judge further finds that the Department failed to establish that it acted in accordance with Department policy when it determined that the Claimant was a member of the overpaid FAP group and proposed a recoupment of the OI from the Claimant.

Accordingly, it is ORDERED:

1. The Department's closure of the FAP benefits is AFIRMED.
2. The Department's proposal to recoup an OI from the Claimant is REVERSED.
3. The Department shall cease any attempt to recoup the OI from the Claimant.


Andrea J. Bradley
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: 09/23/11

Date Mailed: 09/26/11

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 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.

AJB/dj

cc:

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