

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.: 2011-9304
Issue No.: 3052
Case No.: [REDACTED]
Hearing Date: January 5, 2011
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 January 5, 2011. The claimant appeared and testified. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, appeared and testified.

ISSUES

Whether DHS established a basis to recoup an alleged over-issuance of Food Assistance Program (FAP) benefits from 2/2010-7/2010

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 was an ongoing FAP benefit recipient.
2. On 11/4/10, DHS mailed Claimant unspecified forms concerning an alleged FAP benefit over-issuance that occurred from 2/1/2010-7/31/2010.
3. DHS failed to present any evidence verifying that an over-issuance of FAP benefits occurred.
4. On 11/10/10 Claimant requested a hearing disputing the recoupment.

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).

BAM 600 contains the DHS policy for administrative hearings including the client deadline to file a hearing request. Clients have 90 calendar days from the date of the written notice of case action to request a hearing. BAM 600 at 4.

DHS initially contended that Claimant was untimely in requesting a hearing concerning the recoupment of an allegedly over-issued FAP benefits. DHS indicated that the alleged over-issuance occurred from 2/2010-7/2010 and that Claimant's request was submitted more than 90 days after 7/2010. DHS failed to consider that a client has 90 days from the date of the written notice of case action to request a hearing, not 90 days from some other date such as the last date of an over-issuance period. The policy makes perfect sense as Claimant could not object to a recoupment until she knew that a recoupment occurred; Claimant would not know of the recoupment until she was mailed a notice of the recoupment. It was not disputed that DHS did not send notice to Claimant of the recoupment until 11/4/10. As Claimant requested a hearing on 11/10/10, she was well within the 90 day period from the date of written notice to request a hearing. It is found that Claimant timely requested a hearing concerning the FAP benefit recoupment.

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the over-issuance (OI). BAM 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.*

In the present case, there was no evidence to establish that an over-issuance of FAP benefits occurred. The undersigned received no evidence concerning whether the alleged OI was agency-caused or client-caused or what Claimant did or should have received in FAP benefit months during the alleged OI period. DHS conceded that no evidence was presented concerning the OI. It is found that DHS failed to establish a basis to recoup FAP benefits for an alleged OI from 2/2010-7/2010.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS improperly sought recoupment of allegedly over-issued FAP benefits over the period of 2/2010-7/2010.

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The actions taken by DHS are REVERSED.

Christian Gardocki

Christian Gardocki
Administrative Law Judge
For Duane Berger, Director
Department of Human Services

Date Signed: 1/13/2011

Date Mailed: 1/13/2011

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 of the rehearing decision.

CG/jlg

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