

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.: 2011-10981
Issue No.: 3002/3052
Case No.: [REDACTED]
Hearing Date: January 18, 2011
Macomb County DHS (20)

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 18, 2011. The claimant appeared and testified. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, appeared and testified.

ISSUES

1. Whether DHS properly calculated Claimant's Food Assistance Program (FAP) benefit issuance effective 11/2010.
2. Whether DHS established a basis to recoup \$198 in allegedly over-issued FAP benefits from Claimant.

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. Claimant received \$114 in FAP benefits for 9/2010 and \$116 in FAP benefits for 10/2010.
3. On 9/30/10, Claimant submitted a Semi-Annual Contact Report (Exhibit 5) as part of a redetermination of FAP benefits to be effective 11/2010.
4. Claimant was a member of a one person FAP benefit group.

5. Claimant received \$1601/month in gross employment income (see Exhibit 2); Claimant had no other income.
6. Claimant was responsible for a \$700/month shelter obligation.
7. On 10/26/10, DHS mailed Claimant a Notice of Case Action (Exhibit 6) informing Claimant of a FAP benefit reduction to \$16/month effective 11/2010.
8. On 10/26/10, DHS mailed a Notice of Over-issuance (Exhibit 3) informing Claimant that \$198 in FAP benefits were over-issued to Claimant based on client error and that an administrative law judge determined the recoupment was correct.
9. No administrative law judge ever authorized DHS to recoup \$198 in FAP benefits.
10. On 10/29/10, Claimant requested a hearing disputing the 11/2010 FAP benefit issuance and the attempted recoupment of \$198 in 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 Michigan Compiled Laws 400.10, *et seq.*, and Michigan Administrative Code R 400.3001-3015. DHS regulations are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT). Updates to DHS regulations are found in the Bridges Policy Bulletin (BPB).

In the present case, Claimant disputed the FAP benefit determination effective 11/2010. Claimant did not have a specific reason for disputing the benefit amount except that he received more in FAP benefits prior to his redetermination. What Claimant received in a prior benefit month has no impact on a subsequent month's determination of FAP benefits. Thus, the undersigned is not inclined to address Claimant's specific dispute except to note that DHS explained the benefit decrease was primarily attributable to an employment income increase. The undersigned will examine the correctness of the DHS income calculation in the subsequent FAP benefit analysis. BEM 556 outlines the proper procedures for calculating FAP benefits.

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For non-child support income, DHS is to budget income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month. BEM 505 at 4. DHS is to count the gross employment income amount. BEM 501 at 5. Claimant verified the following bi-weekly gross employment income amounts (see Exhibit 2): \$774.59 received on 9/10/10 and \$723.52 received on 9/24/10.

DHS converts biweekly non-child support income into a 30 day period by multiplying the average income by 2.15. BEM 505 at 6. Multiplying Claimant's countable average biweekly income (\$749.05) by 2.15 results in a monthly countable income amount of \$1610 (dropping cents).

DHS calculated a countable income of \$1601 for Claimant (see Exhibit 1). As DHS calculated a slightly more favorable amount for Claimant, the undersigned will accept the DHS calculation as correct for purposes of the FAP benefit analysis.

DHS gives a 20% credit for reported employment income. Multiplying Claimant's gross employment income (\$1601) by 80% results in a total countable employment income of \$1280 (dropping cents).

Claimant's FAP benefit group receives a standard deduction of \$141. RFT 255. The standard deduction is a deduction given to all FAP benefit groups; the amount varies based on the group size. The standard deduction is subtracted from the countable monthly income to calculate the group's adjusted gross income. The adjusted gross income amount is found to be \$1139.

DHS uses certain expenses to determine net income for FAP eligibility and benefit levels. BEM 554 at 1. For groups without a senior, disabled or disabled veteran (SDV) member, DHS considers the following expenses: child care and excess shelter (housing and utilities) up to a capped amount and court ordered child support and arrearages paid to non-household members. Claimant's only relevant expenses involve shelter.

It was not disputed that Claimant is responsible for a \$700/month rental obligation. DHS gives a flat utility standard to all clients. BPB 2010-008. The utility standard of \$588 (see RFT 255) encompasses all utilities (water, gas, electric, telephone) and is unchanged even if a client's monthly utility expenses exceed the \$588 amount. The total shelter obligation is calculated by adding Claimant's housing expenses (\$700) to the utility expenses (\$588); this amount is found to be \$1288.

DHS only credits FAP benefit groups with what DHS calls an "excess shelter" expense. This expense is calculated by taking Claimant's total shelter expenses (\$1288) and subtracting half of Claimant's adjusted gross income. Claimant's excess shelter amount is found to be \$719 (rounding up).

FAP benefit groups without a senior, disabled or disabled veteran (SDV) member are entitled to the actual excess shelter cost or the excess shelter cap, whichever is lesser. The excess shelter cap is \$458. RFT 255 at 1. As Claimant's group does not have an SDV member, Claimant is only entitled to the excess shelter credit cap of \$458.

Claimant's net income is determined by taking Claimant's adjusted gross income (\$1139) and subtracting the excess shelter credit (\$458). Claimant's net income is found to be \$681. A chart listed in RFT 260 is used to determine the proper FAP benefit issuance. Based on Claimant's group size and net income, Claimant's FAP benefit amount is found to be \$16, the same amount calculated by DHS. It is found that DHS properly calculated Claimant's FAP benefits effective benefit month 11/2010.

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.*

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 or non-reporting was done intentionally. An OI may also be caused by agency error. This type of OI occurs when DHS mistakenly issues an excess of benefits through no fault of the client. An OI caused by DHS error is not pursued if the estimated OI amount is less than \$125 per program. BAM 705 at 1.

The present case involves an allegation that Claimant failed to timely report employment income to DHS resulting in a OI of FAP benefits for 9/2010 and 10/2010. DHS established that Claimant submitted pay stubs (Exhibit 2) with his Semi-Annual Contact Report (Exhibit 5) on 9/30/10.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 at 7. Changes must be reported within 10 days of receiving the first payment reflecting the change. *Id.*

DHS contended that Claimant received FAP benefits based on a much lower income which was previously reported by Claimant. DHS also contended that Claimant failed to timely report an increase in income to DHS causing Claimant to be over-issued FAP benefits for 9/2010 and 10/2010. The earliest pay stub introduced as evidence of Claimant's increased income was dated for 9/10/10. Claimant would have been allowed 10 days to report the income change to DHS. Thus, according to DHS regulations, Claimant had until 9/20/10 to report the increased income. If Claimant had reported an increase in employment income on 9/20/10 and DHS acted on the change on the very same day, Claimant's FAP benefits would not have been affected until 11/2010, the

same month affected in the present case. The delay in the effective month of benefit change is attributable to the case action requirements (see BAM 220) where decreases in benefits are pended a minimum of 11 days. DHS regulations would also require that the affected month of change would be the month following the month in which the negative action takes effect.

The above analysis demonstrates that Claimant may have been slightly late in reporting an increase in employment but the late reporting made no difference when Claimant's FAP benefits would be affected; in either case, 11/2010 was the proper FAP benefit month for the reduction. Thus, no over-issuance could have occurred if Claimant received the FAP benefits that he was entitled to receive according to DHS regulations. Accordingly, DHS failed to establish a basis to recoup \$198 in FAP benefits from Claimant for an alleged over-issuance from 9/2010-10/2010.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly calculated Claimant's FAP benefits effective 11/2010 as \$16. The actions taken by DHS are PARTIALLY AFFIRMED.

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS improperly attempted to recoup \$198 in FAP benefits from Claimant. It is ordered that DHS cease any further recoupment action concerning the \$198 and that DHS supplement Claimant for any portion of the FAP benefits that has been previously recouped. The actions taken by DHS are PARTIALLY REVERSED.

Christian Gardocki

Christian Gardocki
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: 1/25/2011

Date Mailed: 1/25/2011

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.

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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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