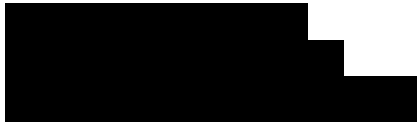


STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 201117743
Issue No: 3002/3052
Hearing Date: April 12, 2011
Kent County DHS

ADMINISTRATIVE LAW JUDGE: Janice G. Spodarek

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, an in-person hearing was held on April 12, 2011.

ISSUES

1. Did the DHS properly deny claimant's mortgages as a shelter expense for an entire year before forwarding claimant's hearing request to the appropriate authority?
2. Did the DHS properly recoup claimant's FAP benefits for an entire year before forwarding claimant's hearing request to the appropriate authority?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. At all relevant times herein, claimant was a FAP recipient with the Michigan DHS.
2. At all relevant times prior to the negative actions herein, claimant received FAP benefits and had her mortgages budgeted on her food stamp budget as a shelter expense.
3. The department first reduced claimant's FAP benefits on the grounds that the mortgages were not valid beginning November 1, 2009. Claimant requested an administrative hearing. On March 23, 2010 Judge Magyar reversed the department instructing the department to give claimant an

opportunity to provide verification. Reg No 20101792; 201018760. After claimant submitted verifications, the DHS decided that it would continue denying claimant a shelter expense. On March 31, 2010, the DHS issued notice to claimant informing her that the mortgages were not allowed and that claimant's FAP benefits will be recouped beginning November 1, 2009.

4. Claimant filed a timely hearing request on April 5, 2010. The department failed to reinstate the actions pending the outcome of the hearing as it was required to under policy and procedure.
5. The department failed to forward claimant's hearing request to the appropriate authority for almost one year.
6. Claimant has two mortgage notes—one for [REDACTED] on the first mortgage; the second mortgage is [REDACTED]. Claimant's entire mortgage obligation which is in the form of a land contract constitutes [REDACTED] per month.
7. The department failed to follow its policy and procedure in forwarding the documents to policy where such would be questionable. The department asked policy if the promissory note could constitute a mortgage without forwarding claimant's mortgages. Policy responded that it would not be allowed. Policy cited no authority and did not review the mortgage contracts.
8. The department's explanation for not forwarding its hearing request to SOAHR for almost one year was "we've been busy."

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 (DHS or department) administers the FAP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3001-3015. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Policy and procedure applicable to the case herein is found in numerous items dealing with assets, mortgages, FAP budgeting and recoupment. These policies are found in BEM Items 400, 500, 502, 550, 554; BAM Items 105, 220, 600, 700, 705, 710, 715, 720, 110, 115, 210.

Policy requires the department to forward hearing requests to SOAHR in a timely fashion. It appeared that Kent County was unable to forward its hearing requests for almost one year due to its workload. Claimant initially requested a hearing on this matter which was held before Judge Magyar on March 17, 2010. The department determined shortly after Judge Magyar's decision that after reviewing the verifications, claimant's mortgages did not constitute a mortgage. The department issued notice on March 31, 2010 along with a Notice of Recoupment. Claimant filed a timely hearing request on April 5, 2010. Claimant's hearing request was within the 11 day window. However, the department not only failed to reinstate the actions but also began recouping benefits from claimant without allowing her the opportunity for a review until April 12, 2011. Claimant has waited over a year and a half to have this issue resolved.

This Administrative Law Judge has reviewed the mortgages and finds that the notes do constitute a mortgage in the form of a land contract as permitted under policy and procedure. Claimant's [REDACTED] per month is to be allowed on her FAP budget as a shelter expense.

With regards to the recoupment, as the mortgages meet the policy requirements, the department has no right to recoup benefits to which claimant was entitled.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department's actions were:

ISSUE 1

The department incorrectly failed to allow claimant's [REDACTED] in mortgage payments to be a deduction for a shelter expense on claimant's FAP budget from November 1, 2009 and continuing.

Accordingly, the department's actions on this matter are REVERSED.

ISSUE 2

The department's recoupment of claimant's FAP benefits as calculated from the time period beginning November 1, 2009 and continuing was incorrect.

The department is Ordered to recalculate claimant's eligibility since November 1, 2009. The Department shall recalculate FAP budgets by allowing the shelter expense. The department is also Ordered to itemize how much in recoupment the department has taken from claimant's benefits. The department is Ordered to immediately stop any recoupment action. The department is Ordered to issue supplemental benefits to claimant to which she may be entitled since November 1, 2009. The department shall issue written notice specifically itemizing both the benefits owed, the recoupment amount incorrectly taken, and the total amount of FAP benefits owed to claimant. The

department shall issue supplemental benefits to claimant. The notice shall give claimant her 90 day right to a hearing and claimant shall retain her right to a hearing for 90 days from the notice on the issue of the calculation of the incorrect recoupment and failure to give claimant the shelter expense. It is so Ordered.

/S/

Janice G. Spodarek
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: April 19, 2011

Date Mailed: April 19, 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 date of the rehearing decision.

JGS/db

cc:

