

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

IN THE MATTER OF:



Reg. No. 201125794
Issue No. 3002 3052
Case No. [REDACTED]
Hearing Date: June 6, 2011
Wayne County DHS (49)

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 June 6, 2011. The claimant appeared and testified. On behalf of Department of Human Services (DHS), Annis Howell, Specialist, and Gloria Thompson, Manager, appeared and testified.

ISSUES

1. Whether DHS established a basis to recoup \$692 in allegedly over-issued Food Assistance Program (FAP) benefits.
2. Whether DHS properly terminated Claimant's FAP benefits effective 4/2011.

FINDINGS OF FACT

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

1. Claimant was an ongoing FAP benefit recipient since at least 4/2010.
2. On 2/28/11, DHS determined Claimant received \$692 in over-issued FAP benefits based on a \$173/month alleged over-issuance in FAP benefits for each month from 4/2010-6/2010 and 9/2010.
3. Claimant received \$1862/month in Retirement, Survivors, Disability Insurance (RSDI).
4. Claimant verified a monthly housing obligation that was not factored into Claimant's 4/2011 FAP benefit determination.

5. On 2/24/11, DHS terminated Claimant's FAP benefits effective 4/2011 due to excess income, based in part, on a failure to budget Claimant's medical expenses other than a Medicare premium and a failure to factor Claimant's housing obligation.
6. On 3/23/11, Claimant requested a hearing to dispute the termination of FAP benefits and the recoupment of FAP benefits by DHS.

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). DHS (formerly known as the Family Independence Agency) administers the FAP 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).

The undersigned will refer to the DHS regulations in effect as of 2/2011, the month of the DHS decision which Claimant is disputing. Current DHS manuals may be found online at the following URL: <http://www.mfia.state.mi.us/olmweb/ex/html/>.

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 client group in excess of what they were eligible to receive. *Id.* Recoupment is a DHS action to identify and recover a benefit OI. *Id.*

DHS may pursue an OI whether it is a client caused error or DHS error. *Id.* at 5. Client and Agency error OIs are not pursued if the estimated OI amount is less than \$125 per program. BAM 700 at 7. If improper budgeting of income caused the OI, DHS is to recalculate the benefits using actual income for the past OI month for that income source. BAM 705 at 6.

In the present case, DHS alleged that Claimant was allegedly over-issued \$692 in FAP benefits. Specifically, DHS alleged that Claimant was over-issued \$173/month in FAP benefits for 4/2010-6/2010 and 9/2010. DHS alleged that the basis of the over-issuance was a DHS error in budgeting Claimant's medical expenses.

DHS over-issuances should be supported by budgets. Budgets would be evidence of how DHS calculated the over-issuance and would be persuasive evidence justifying the amount of the recoupment. DHS presented an over-issuance summary (Exhibit 3) in an

attempt to satisfy this requirement; no budgets were submitted. The failure to submit budgets for each of the calendar months where an OI allegedly occurred gives the undersigned no understanding of how the OI was calculated.

Perhaps more importantly, DHS did not submit any evidence establishing that an OI occurred. DHS described the issue as one of unverified medical expenses but presented no evidence as to what medical expenses, if any, were originally budgeted and why those expenses would be inappropriate to budget. DHS claimed that some request was made for the medical expenses but DHS presented no evidence of the request. DHS unquestionably has the authority to request medical expenses prior to budgeting them in a client's future benefit determination; the DHS authority to require verification of expenses to revisit one year old benefits is less clear. The undersigned need not examine the fairness of the request in the present case as the case is better resolved on the DHS failure to provide evidentiary support for the recoupment. It is found that DHS failed to establish a basis for recouping \$692 in FAP benefits from Claimant over the period of 4/2010-6/2010 and 9/2010.

Claimant also disputed a termination of FAP benefits effective 4/2011. DHS terminated Claimant's FAP benefits based on excess income. BEM 556 outlines the proper procedures for calculating FAP benefits. Three relevant issues were in dispute concerning whether Claimant's FAP benefits were properly terminated.

The first disputed issue was Claimant's income. For all programs, the gross amount of RSDI is countable income. BEM 503 at 20. DHS budgeted \$1862/month in unearned income. Claimant stated she received \$1766/month in income. The \$1766/month that Claimant testified to receiving was a net amount, not a gross amount. Claimant's actual RSDI money was reduced by a \$96 Medicare premium; thus, DHS properly budgeted Claimant's gross RSDI as \$1862/month.

Claimant contended that her medical expenses were not sufficiently factored. It was not disputed that Claimant verified some medical expenses from 2010 but no expenses since. Claimant stated that she had repeating ongoing medical expenses which should have counted for ongoing months; DHS stated that Claimant needed to repeatedly verify her medical expenses, even if the expenses were regularly incurred.

For medical expenses, DHS is to estimate a person's medical expenses for the benefit period. BEM 554 at 6. The estimate is based on all of the following:

- verified allowable medical expenses.
- available information about the member's medical condition and health insurance; and
- changes that can reasonably be anticipated to occur during the benefit period.

The undersigned failed to establish a sufficient record to determine whether Claimant's previously submitted medical expenses should be factored into her 4/2011 benefit eligibility. Based on the limited evidence, the undersigned is more inclined to uphold the exclusion of medical expenses due to Claimant's failure to verify ongoing expenses. Though DHS regulations appear to allow clients to use ongoing medical expenses for future months, the burden would be better placed on clients to establish the recurring nature of the expense rather than DHS. Thus, the undersigned is inclined to uphold the DHS exclusion of medical expenses based on Claimant's failure to establish the recurring nature of the expense.

Lastly Claimant's rent or mortgage expense was in dispute. Claimant testified that she paid her daughter monthly for a mortgage in her daughter's name though the home remained in Claimant's name. DHS did not budget the expense though conceded that Claimant submitted a receipt which appeared to verify the expense. Claimant also testified that she submitted a Shelter Verification in 12/2010 though DHS stated that there was no record of the expense.


DHS gave no reason for not budgeting the expense despite the presence of the receipt provided by Claimant. Receipts are an acceptable verification source of shelter expenses. BEM 554 at 11. If the expense was questionable, DHS provided no reason why it was questionable. It is found that DHS erred in not budgeting Claimant's housing expense.

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 FAP benefits and improperly terminated Claimant's FAP benefits. It is ordered that DHS:

- cease recoupment actions against Claimant for FAP benefit months 4/2010-6/2010 and 9/2010 on the basis of an OI based on unverified medical expenses;
- redetermine Claimant's FAP benefit eligibility effective 4/2011 using Claimant's verified rent/mortgage amount
- supplement Claimant for any FAP benefits not received, if any, as a result of the DHS error in excluding Claimant's housing expense.

The actions taken by DHS are REVERSED.


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

201125794/CG

Date Signed: June 14, 2011

Date Mailed: June 14, 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/ctl

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