

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

IN THE MATTER OF:

[REDACTED]

Reg. No. 2011-34043
Issue No. 3002
Case No. [REDACTED]
Hearing Date: June 30, 2011
Macomb (20)

ADMINISTRATIVE LAW JUDGE: Jan Leventer

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to Michigan Compiled Laws (MCL) 400.9 and 400.37, and Claimant's request for a hearing. After due notice, a telephone hearing was held on June 30, 2011. The Claimant appeared and testified at the hearing. [REDACTED] Eligibility Specialist, appeared and testified on behalf of the Department of Human Services (DHS).

ISSUE

Whether DHS calculated Claimant's Food Assistance Program (FAP) benefits in accordance with DHS policy and procedure?

FINDINGS OF FACT

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

1. At all times pertinent to this matter, Claimant was a recipient of Supplemental Security Income (SSI) benefits from the U.S. Social Security Administration.
2. Claimant's monthly gross payable SSI benefit is \$664, which is verified in the Single On-Line Query report, page 3, in the boldface section entitled "SSI Gross Payable Amount," on the center of the page.
3. Effective January 1, 2011, Claimant received \$178 per month FAP benefits from DHS.
4. On May 1, 2011, DHS reduced Claimant's FAP to \$173.

5. On May 9, 2011, Claimant filed a Notice of Hearing Request with DHS.

CONCLUSIONS OF LAW

FAP was established by the U.S. Food Stamp Act of 1977 and is implemented by Federal regulations contained in Title 7 of the Code of Federal Regulations. DHS administers FAP pursuant to MCL 400.10 *et seq.* and Michigan Administrative Code Rules 400.3001-400.3015. Department policies are found in Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM) and Reference Tables (RFT). These manuals are available online at www.michigan.gov/dhs-manuals.

BAM, BEM and RFT are the policies and procedures DHS officially created for its own use. While the DHS manuals are not laws created by the U.S. Congress or the Michigan Legislature, they constitute legal authority which DHS must follow. It is to the manuals that I look now, in order to see what policy applies in this case. After setting forth what the applicable policy is, I will examine whether it was in fact followed in this case.

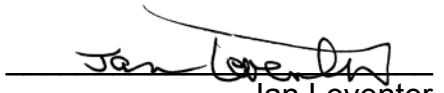
BEM 500, "Income Overview," contains the relevant policy in its definition of "Returned Benefits." I will apply this policy in this case. To summarize the policy, it is that when public assistance benefits of any type are remitted back to the agency from where they came, they are not countable as income for FAP purposes. There are only three exceptions to this policy, i.e., situations where returned benefits are included in FAP income. I have reviewed them carefully and I determine that they do not apply in this case. The first exception is for the situation where the overissuance was never counted as income when it was actually received, and it should have been counted at that time. The second exception is for when there has been an Intentional Program Violation of a cash assistance program, and the third exception is when there has been an IPV of the SSI program specifically. I determine that no IPV is alleged in this case, so these two exceptions are not applicable to the facts before me. BEM 500, pp. 3-4; see also, BEM 503, p. 23.

I have reviewed all of the evidence and testimony in this case as a whole. I determine and conclude that the Agency failed to apply BEM 503 in this case, and a remedy must be provided. Accordingly, I am remanding this case back to DHS to recalculate the correct income and the FAP budget in this case.

In conclusion, based on all of the findings of fact and conclusions of law, I find and conclude that DHS is REVERSED in this case. DHS shall recalculate Claimant's FAP budget and provide any supplemental retroactive benefits appropriate to restore Claimant to the benefit level to which she is entitled.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, states that DHS is REVERSED. IT IS ORDERED THAT DHS shall recalculate Claimant's FAP budget and provide any supplemental retroactive benefits necessary to restore her to the benefit level to which she is entitled. All steps shall be taken in accordance with DHS policy and procedure.


Jan Leventer
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: June 30, 2011

Date Mailed: June 30, 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.

JL/cl

cc:

