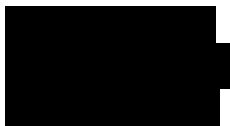


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 2011-36511
Issue No: 3020, 3052



Genesee County DHS

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the DHS client's (also referred to as "the claimant") request for a hearing received on June 3, 2011. After due notice, a telephone hearing was held on July 13, 2011. The claimant personally appeared and provided testimony.

ISSUE

Did the department act properly in trying to recover a Food Assistance Program (FAP) overissuance that the claimant received due to department error?

FINDINGS OF FACT

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

1. On December 1, 2008, the claimant applied for FAP benefits. (Department Exhibit 1). In his application, the claimant indicated that he was renting a house. (Department Exhibit 1).
2. On November 6, 2009, the claimant indicated that he had purchased the house and provided the department with copies of tax bills. (Department Exhibits 2 & 3).
3. In November 2009, the department made changes to the claimant's expenses on his FAP budget and incorrectly calculated the amount of property taxes. (Department Exhibit 4 & 5).
4. As a result of a department error, the department had budgeted the incorrect amount of property taxes which resulted in an overissuance of [REDACTED] from March 1, 2010 through November 30, 2010. (Department Exhibits 6-8, 9 & 10).

5. On May 27, 2011, the department mailed the claimant a written notice of overissuance (DHS-4358-A), requesting that he repay the FAP overissuance. (Department Exhibit 11).
6. On June 3, 2011, the department received the claimant's hearing request, protesting the department's determination that he must repay the FAP overissuance that he received due to the department's error. (Hearing Request).

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (BRM).

The department's computer system (known as Bridges) uses certain expenses to determine net income for FAP eligibility and benefit levels. BEM 554. For groups with no senior/disabled/disabled veteran (SDV) member, Bridges uses the following:

- Dependent care expense.
- Excess shelter up to the maximum in RFT 255.
- Court ordered child support and arrearages paid to non-household members.
 - For groups with one or more SDV member, Bridges uses the following; see BEM 550:
- Dependent care expense.
- Excess shelter.
- Court ordered child support and arrearages paid to non-household members.
- Medical expenses for the SDV member(s) that exceed \$35. BEM 554.

Policy directs the department to complete either a manually-calculated or Bridges budget to document expenses every time an expense change is reported. BEM 554.

An expense is allowed if all of the following are present:

- The service is provided by someone outside of the FAP group.

- Someone in the FAP group has the responsibility to pay for the service in money.
- Verification is provided, if required. BEM 554.

Responsibility to pay means that the expense is in the name of a person in the FAP group. BEM 554. Bridges converts all expenses (except one-time-only expenses the group does not wish to average) to a nonfluctuating monthly amount. The same conversion method is used to determine countable available income in BEM 505.

Bridges will convert a(n):

- Weekly expense, multiply the average weekly expense by 4.3.
- Twice a month expense, multiply the average weekly expense by 2.
- Every other week expense, multiply the average expense by 2.15.
- Yearly expense, average the bill over 12 months beginning with the first billing of the year.
- Quarterly expense, average the bill over three months.
- Expense billed less often than monthly. Bridges will average the one-time-only expense over the balance of the benefit period or over the period of time the client has the responsibility to pay. The expense is allowed beginning with the first benefit month the change can affect. BEM 554.

The department will budget non-converted expenses for the month they are billed or otherwise become due, regardless of when the FAP group intends to pay the expense. BEM 554. The department will allow a shelter expense when the FAP group has a shelter expense or contributes to the shelter expense. BEM 554. A shelter expense will not be prorated even if the expense is shared. BEM 554. Shelter expenses are allowed when billed. BEM 554. The expenses do not have to be paid to be allowed. BEM 554.

Housing expenses include rent, mortgage, a second mortgage, home equity loan, required condo or maintenance fees, lot rental or other payments including interest leading to ownership of the shelter occupied by the FAP group. BEM 554. The expense must be a continuing one. BEM 554. Payments that exceed the normal monthly obligation are not deductible as a shelter expense unless the payment is necessary to prevent eviction or foreclosure, and it has not been allowed in a previous FAP budget. BEM 554. Additional expenses for optional charges, such as carports, pets, etc. are not allowed. BEM 554.

Property taxes, state and local assessments and insurance on the structure are allowable expenses. BEM 554. Insurance costs for the contents of the structure, for example, furniture, clothing and personal belongings are not allowed. BEM 554.

An overissuance is the amount of benefits issued to the client group in excess of what they were eligible to receive. BAM 705. The amount of the overissuance is the amount of benefits the group actually received minus the amount the group was eligible to receive. BAM 720. When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the overissuance. BAM 700.

Department errors are caused by incorrect actions by the Department. BAM 705. Department error overissuances are not pursued if the estimated overissuance is less than \$125 per program. BAM 700. Client errors occur when the customer gave incorrect or incomplete information to the Department. Client errors are not established if the overissuance is less than \$125 unless the client group is active for the overissuance program, or the overissuance is a result of a quality control audit finding. BAM 700.

Here, the claimant purchased a home and paid property taxes. According to policy, property taxes are allowable expenses. BEM 554. On November 6, 2009, the claimant indicated that he had purchased the house and provided the department with copies of tax bills. Due to a department error, the property tax expenses were not used to determine the claimant's eligibility for FAP benefits for the time period of March 1, 2010 through November 30, 2010. The claimant received a monthly FAP allotment of [REDACTED] in each month when he was eligible for a monthly FAP allotment of [REDACTED] during this time period. As a result, the claimant received a total FAP overissuance of [REDACTED] during the time period of the time period of March 1, 2010 through November 30, 2010.

The claimant testified that he is not at fault for the error and he should not be punished for the department's failure to properly determine his FAP allotment. However, the claimant's grievance centers on his dissatisfaction with the department's current policy. The department is required to recoup overissuances of FAP benefits, even when the claimant is not at fault. As a result of a policy correction effective March 1, 2010, the agency error overissuance threshold was lowered to [REDACTED] for all programs with a retroactive date of August 1, 2008. All agency errors with an overissuance of [REDACTED] or more will be recouped. (Bridges Recoupment Interim Bulletin 2010-007). Prior to this policy correction in March 2010, agency error overissuances were not pursued by the department if the amount was less than \$500.00 per program.

Therefore, the claimant's request is not within the scope of authority delegated to this Administrative Law Judge. Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations, or make exceptions to the department policy set out in the program manuals. Furthermore, administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940).

Based on the evidence and testimony available during the hearing, the department has established that the claimant received a [REDACTED] FAP overissuance, which the department is required to recoup.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department established that the claimant received a [REDACTED] FAP overissuance.

The department's recoupment of overissued FAP benefits is AFFIRMED.

It is SO ORDERED.

_____/s/_____
C. Adam Purnell
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 7/22/11

Date Mailed: 7/22/11

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.

CAP/ds

[REDACTED]