

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 20113653

Issue No: 3020

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

November 30, 2010

Ogemaw County DHS

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Respondent's request for a hearing. After due notice, a telephone hearing was held on November 30, 2010. The Respondent personally appeared and provided testimony.

ISSUE

Did the department act properly in trying to recover a FAP overissuance that Respondent 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. Respondent had been a FAP recipient at all times relevant to this matter.
2. In December 2008, an audit showed Respondent was receiving earned income from Wal-Mart since September 2008.
3. Due to a department error, the department failed to count Respondent's earned income in determining her eligibility for FAP benefits for the period of January 1, 2009 through March 31, 2009.
4. As a result of the department error, Respondent received a \$474.00 FAP overissuance during the period of January 2009 through March 2009. (Department Exhibit #2).

5. As a result of a client error, Respondent received an overissuance of \$162.00 in FAP benefits in December 2008.
6. On October 7, 2010, the department sent Respondent written notice of the FAP overissuance, a DHS-4358-B, requesting that she repay it. (Department Exhibit #2).
7. On October 15, 2010, the department received Respondent's hearing request, protesting the department's determination that she must repay the FAP overissuance that she received due to the department's error.
8. The department's recoupment action was deleted pending this hearing.

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 (PRM).

All earned and unearned income available to the Respondent is countable. Earned income means income received from another person or organization or from self-employment for duties that were performed for compensation or profit. Unearned income means all income that is not earned, including but not limited to funds received from the Family Independence Program (FIP), State Disability Assistance (SDA), Child Development and Care (CDC), Medicaid (MA), Social Security Benefits (RSDI/SSI), Veterans Administration (VA), Unemployment Compensation Benefits (UCB), Adult Medical Program (AMA), alimony, and child support payments. The amount counted may be more than the client actually receives because the gross amount is used prior to any deductions. BEM 500.

Food assistance groups with countable earnings, as currently defined in the BEM 500 series, are assigned to the simplified reporting (SR) category. This reporting option increases FAP participation by employed households and provides workload relief. Simplified reporting groups are required to report **only** when the group's actual gross monthly income (**not** converted) exceeds the SR income limit for their group size. **No** other change reporting is required. If the group has an increase in income, the group must determine their total gross income at the end of that month. If the total gross income exceeds the group's SR income limit, the group must report this change to their specialist by the 10th day of the following month, or the next business day if the 10th day falls on a weekend or holiday. Once assigned to SR, the group remains in SR throughout the current benefit period unless they report changes at their semi-annual contact or redetermination that make them ineligible for SR. BAM 200.

The Department determines a client's eligibility for program benefits based on the client's actual income and/or prospective income. Actual income is income that was already received. Prospective income is income not yet received but expected. Prospective budgeting is the best estimate of the client's future income. BEM 505.

All income is converted to a standard monthly amount. If the client is paid weekly, the Department multiplies the average weekly amount by 4.3. If the client is paid every other week, the Department multiplies the average bi-weekly amount by 2.15. BEM 505.

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.

Respondent was enrolled in the simplified reporting category and had an income limit of \$1,107.00. Respondent was an on going FAP recipient and received FAP benefits from July 1, 2008 through March 31, 2009. In December 2008, during an audit, the department learned that Respondent began working for Wal-Mart in September 2008. Respondent received \$176.00 for the months of October, November and December 2008. Respondent was only entitled to \$14.00. Because the first two months of the overissuance are not counted against the Respondent, the department is only entitled to recoup the overissuance for December 2008. Therefore, Respondent received an overissuance of \$162.00 for the month of December 2008 based on a client error.

Due to a department error, this income was not used to determine Respondent's eligibility for FAP benefits for the time period of January through March 2009. Respondent received a monthly FAP allotment of \$176.00 in each month from January 1, 2009, through March 31, 2009. Respondent was eligible for a monthly FAP allotment of \$14.00 during January and February 2009 and \$26.00 for March 2009. As a result, Respondent received a monthly \$162.00 FAP overissuance during January and February 2009, and \$150.00 FAP overissuance for the month of March 2009, for a total FAP overissuance of \$474.00.

Respondent testified that she did what she was told and mailed in her pay stubs. Department had no record of receiving Respondent's pay stubs. Respondent argued that she should not be punished for the department's failure to properly determine her FAP allotment when she had fulfilled her duty to report her income.

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The Respondent may appeal the Decision and Order to Circuit Court within 30 days of the mailing 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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