

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2011-36692
Issue No: 3020

[REDACTED]

Saginaw 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 Claimant's request for a hearing. After due notice, a telephone hearing was held on July 6, 2011. Claimant personally appeared and provided testimony.

ISSUE

Did the department act properly in trying to recover a FAP overissuance that 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 October 13, 2010, the department mailed Claimant a Redetermination packet with a due date of November 1, 2010. (Department Exhibit 3).
2. Claimant submitted a timely hearing request on November 24, 2010 after she was notified her Family Independence Program (FIP) case was closing. (Hearing Summary; Department Exhibits 2, 7, 10, 18, 40).
3. As a result of the timely hearing request, the department reinstated Claimant's FIP benefits pending the hearing and mistakenly reinstated Claimant's FAP benefits. (Hearing Summary; Department Exhibits 2, 7, 10, 18, 40).

4. As a result of the department error, Claimant received a [REDACTED] FAP overissuance during the period of December 2010 through March, 2011. (Department Exhibits 1-2, 7, 10, 40).
5. On June 6, 2011, the department received Claimant's hearing request, protesting the department's determination that she must repay the FAP overissuance that she received due to the department's error.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness. BAM 600.

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 Reference Tables Manual (RFT).

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 of Human Services (DHS) or the Department of Information and Technology staff or department processes. Some examples are available information was not used or was used incorrectly, policy was misapplied, action by local or central office staff was delayed, computer errors occurred, information was not shared between department divisions (services staff, Work First! agencies, etc.) or data exchange reports were not acted upon timely (Wage Match, New Hires, BENDEX, etc.). If the department is unable to identify the type of overissuance, it is recorded as a department error. BAM 705. Department error overissuances are not pursued if the estimated overissuance is less than \$125 per program. BAM 700.

In this case, the department mailed Claimant a Redetermination on October 13, 2010 regarding her Food Assistance Program with a due date of November 1, 2010. On November 1, 2010, the department mailed Claimant a Notice of Missed Interview informing Claimant that because she recently missed her scheduled interview to

redetermine her FAP benefits, it was now her responsibility to reschedule the interview before November 30, 2010 or her redetermination would be denied. Claimant failed to call and reschedule her interview and on November 30, 2010, her FAP benefits closed.

On November 24, 2010, the department received Claimant's timely hearing request regarding the closure of her FIP benefits. In accord with policy, the department reinstated Claimant's FIP benefits pending the hearing. While reinstating Claimant's FIP benefits, the departmentally also mistakenly reinstated Claimant's FAP benefits.

On February 24, 2011, Claimant's FIP hearing was dismissed because Claimant failed to appear. At that time, the department found the FAP overissuance from December 1, 2010 through March 31, 2011 in the amount of [REDACTED].

Claimant testified that she is a single mother with four children and cannot afford to repay this overissuance because she is entitled to the FAP benefits, and she should not be penalized for the department's mistake in not telling her that her FAP benefits had closed or in reinstating her FAP benefits when she requested the hearing for her FIP benefits.

Notably, the Notice of Missed Interview mailed to Claimant at her current address on November 1, 2010, informed Claimant that unless she rescheduled her redetermination interview, her FAP benefits would be closed. Claimant failed to reschedule the interview and the department automatically closed Claimant's FAP case on November 30, 2010.

Claimant's grievance in this case centers on dissatisfaction with the department's current policy. The department is required to recoup overissuances of FAP benefits, even when Claimant is not at fault. Claimant's request that she not be held responsible 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 Claimant received a [REDACTED] FAP overissuance, which the department is required to recoup in accord with policy.

DECISION AND ORDER

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

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

It is SO ORDERED.

_____/s/_____
Vicki L. Armstrong
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: ____7/8/11_____

Date Mailed: ____7/8/11_____

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.

Claimant 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.

VLA/ds

