

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg No. 20114233
Issue No. 3020
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date:
December 6, 2010
St. Claire 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 December 6, 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 has been a FAP recipient at all times relevant to this matter.
2. Respondent reported her earned income in a timely manner.
3. Due to a department error, the department failed to count Respondent's earned income in determining Respondent's eligibility for FAP benefits.
4. As a result of the department error, Respondent received a \$1,104.00 FAP overissuance during the period of December 2009 through May 2010. (Department Exhibit #1).

5. On October 19, 2010, the department sent Respondent written notice of the FAP overissuance, a DHS-4358-B, requesting that she repay it. (Department Exhibit #9).
6. On October 29, 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.
7. 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.

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 is an on going FAP recipient and received FAP benefits from December 1, 2009, through May 31, 2010. During this time, Respondent reported to the department that she had been receiving earned income from Port Huron Area School District. Due to department error, this income was not used to determine Respondent's eligibility for FAP benefits.

Respondent received a monthly FAP allotment of \$200.00 in each month from December 1, 2009, through May 31, 2010. Respondent was eligible for a monthly FAP allotment of \$16.00 during these months. Therefore, Respondent received a \$184.00 FAP overissuance during each of these months for a total FAP overissuance of \$1,104.00.

Respondent testified that while she received the money, it was irresponsible of the department to give it to her, because she called and did everything she was supposed to do. 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.

However, Respondent's grievance centers on dissatisfaction with the department's current policy. The department is required to recoup overissuances of FAP benefits, even when Respondent is not at fault. Respondent'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 Respondent received a \$1,104.00 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 Respondent received a \$1,104.00 FAP overissuance.

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

/s/
Vicki L. Armstrong
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: December 7, 2010

Date Mailed: December 7, 2010

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 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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