

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-44126
Issue No.: 3020
Case No.: [REDACTED]
Hearing Date: August 17, 2011
DHS County: Wayne (82-17)

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, which govern the administrative hearing and appeal process, and Claimant's request for a hearing. After due notice, a telephone hearing was held on August 17, 2011, in Detroit, MI. Claimant appeared and testified. [REDACTED], appeared and testified on behalf of the Department of Human Services (DHS).

ISSUE

Whether DHS is entitled to reimbursement from Claimant for overissuance of Food Assistance Program (FAP) benefits?

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. In 2011, DHS provided FAP benefits to Claimant.
2. On January 19, 2011, Claimant began employment, which she reported in a timely fashion.
3. DHS failed to adjust Claimant's FAP.
4. From March 1, 2011-April 30, 2011, a period of two months, Claimant received FAP benefits, part of which she was not eligible to receive.

5. On May 20, 2011, DHS printed out a Claim Detail-Claim Information report and a Claim Search report, both of which state that there was a client failure to report employment, and that the amount owing for March, 2011, only was \$487.
6. On May 23, 2011, DHS issued a Notice of Overissuance, stating that DHS error occurred and the amount of the overissuance was \$526.
7. On June 8, 2011, Claimant filed a Hearing Request for Overissuance or Recoupment Action 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 400.3101-400.3131. DHS' policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the 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. After setting forth what the applicable policy is, a determination shall be made as to whether it was in fact followed in this case.

BAM 700, "Benefit Overissuances," requires DHS to attempt recoupment of all overissuances, regardless of what caused the overissuance.

BENEFIT OVERISSUANCES

DEPARTMENT POLICY

All Programs

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the overissuance (OI). BAM 700, p. 1.

This policy is applicable in this case, and DHS is clearly required to attempt recoupment. However, at the hearing in this case, DHS failed to present sufficient evidence to establish the nature and the amount of the overissuance, and DHS' request to recoup an overissuance is accordingly denied.

Next, BAM 705 requires DHS to “calculate the agency error amount.” This decision is based on a review of the evidence in this case in its entirety and as a whole. In this case, DHS submitted erroneous and incomplete documentation and failed to establish the correct amount of the overissuance. The calculation for March 2011 is \$487, but this number appears on two reports stating that Claimant, and not DHS, error occurred. This is erroneous information as to the source of the error and, as a result, the documents are unreliable as evidence in this case.

Second, there is nothing in the record to establish the amount of the April 2011 overissuance. It may be that the amount for April is \$39, a number arrived at by subtracting \$487 from the number \$526, which appears on the Notice of Overissuance. However, the two amounts, \$487 and \$39, are quite different. One is a two-digit number and one is a three-digit number which is more than thirteen times the first number. It is unclear why the amounts for the two months are so different unless, perhaps, an adjustment was already made.

Based on the record in this case, DHS has not proved with sufficient accuracy what the amount of the overissuance is in this case. DHS’ request to initiate recoupment, without prejudice to DHS taking further action in this matter, is denied.

In conclusion, based on the above findings of fact and conclusions of law, DHS is REVERSED as to its action to recoup FAP overissuances from Claimant in this case.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides and determines that DHS is REVERSED and may not recoup FAP overissuances in this case. IT IS HEREBY ORDERED that DHS is REVERSED, without prejudice. DHS shall:

1. Rescind its recoupment action against Claimant;
2. Take no further action against Claimant with regard to the Notice of Overissuance of May 23, 2011.



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

Date Signed: August 18, 2011

2011-44126/JL

Date Mailed: August 22, 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/pf

cc:

