

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No: 20114984
Issue No: 3002; 3020
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
December 15, 2010
Muskegon 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 Respondent's request for a hearing received on November 3, 2010. After due notice, a telephone hearing was held on December 15, 2010. Respondent personally appeared and provided testimony.

ISSUES

1. Whether the department properly determined Respondent's Food Assistance Program (FAP) benefits?
2. Did the department act properly in trying to recover a FAP overissuance that Respondent received due to client 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 was receiving FAP at all times relevant to this hearing.
2. Respondent submitted a Mid-Certification Contact Notice on July 13, 2010, showing she was paying \$69.00 in rent. (ALJ Exhibit 1).
3. The department mailed Respondent a Notice of Case Action on July 28, 2010, notifying Respondent of the decrease in FAP benefits to \$107.00 for her group size of 1, based on her rent change. (Department Exhibit 2, pages 10-11).

4. The department mailed Respondent a Verification Checklist on July 14, 2010, requesting proof of her rent in the form of a rent receipt, copy of a current lease or a DHS-3688 Shelter Verification Form, due by July 26, 2010. (Department Exhibit 2, pages 15-16).
5. On October 22, 2010, the department received the Adjustment Notification from Michigan State Housing Development Authority (MSHDA), dated March 28, 2010, which shows the contract rent for Respondent's housing was \$350.00, \$69.00 of which was to be paid by Respondent and the remaining \$281.00 of rent to be paid to the landlord by MSHDA. (Department's Exhibit 2, pages 4-5).
6. As a result of the client error, Respondent received a \$144.00 FAP overissuance during the period of July 1, 2010 through August 31, 2010. (Department Exhibit #3).
7. A Notice of Overissuance was mailed to Respondent on October 25, 2010, informing Respondent she had received more benefits that she was eligible for during the period of July 1, 2010 through August 31, 2010, due to a client error because she said her rent was \$350.00 a month when it was actually \$69.00 a month. (Department Exhibit 3).
8. Respondent submitted a hearing request on November 3, 2010, protesting the overissuance and decrease in FAP benefits. (Request for a Hearing).
9. The department's recoupment action was deleted pending this hearing.

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. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance is denied. MAC R 400.903(1).

Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. BAM 600. 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 Bridges Reference Manual (BRM).

All countable earned and unearned gross income available to the client must be considered in determining the client's eligibility for FAP benefits. 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 (AMP), alimony, and child support payments. The department must count the gross benefit amount before any deductions, unless department policy states otherwise. 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. In most cases, the department's estimate of the client's future monthly income will not equal the actual income that the client receives. However, as long as the department uses the best available information to determine future income, and there is no concealed information or mathematical error, the department's estimate will not be determined inaccurate.

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.

In determining Respondent's monthly net income, the standard deduction of \$141.00 was deducted from Respondent's gross monthly unearned SSI income of \$708.00 resulting in an adjusted gross income of \$567.00 a month. The department determines a FAP group's net income by deducting certain allowable expenses. These expenses include dependent care expenses, child support expenses and shelter expenses. BEM 554. Respondent had shelter expenses only. Effective May 2010, Respondent's monthly rent was \$69.00 and she had a monthly heat/utility obligation. The department properly gave Respondent the heat/utility (including telephone) standard of \$588.00. RFT 255, effective 10/1/10.

Respondent's total shelter expense was properly determined to be \$657.00. Pursuant to departmental policy, 50% of \$567.00, Respondent's adjusted gross income, must be deducted from her total shelter. ($\$567.00 \times 50\% = \283.50). Since Respondent's total shelter expense of \$657.00 is more than 50% of the adjusted gross income of her FAP group, Respondent had an excess shelter expense of \$374.00. The department was required to deduct any excess shelter expense from Respondent's adjusted gross income of \$567.00 resulting in net income of \$193.00. BEM 556.

A client with a group size of one and a net income of \$193.00 is entitled to a FAP allotment of \$142.00, which is the amount of FAP benefits granted to the Respondent

for this period. RFT 260. Based on the evidence and testimony available during the hearing, the department properly established Respondent is receiving the proper amount of FAP benefits.

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. 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 \$125.00 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 July 1, 2010, through August 31, 2010. The department discovered Respondent's decrease in rent when she submitted a Mid-Certification Contact Notice on July 13, 2010, showing she was paying \$69.00 in rent and not the \$350.00 she had been budgeted based on her earlier reporting. This decrease in rent was not used to determine Respondent's eligibility for FAP benefits, resulting in Respondent receiving a total FAP overissuance of \$144.00.

Respondent received a monthly FAP allotment of \$200.00 in July and August of 2010. Respondent was only eligible for a monthly FAP allotment of \$128.00 during those two months based on the decrease in rent she was paying. As a result, Respondent received a \$72.00 FAP overissuance during each of those months for a total FAP overissuance of \$144.00.

Respondent stated that she first became aware of the decrease in her rent on June 1, 2010, when her landlord notified her that he only received \$281.00 from MSHDA toward her rent and she would have to pay the remaining \$69.00. Respondent reported the change in her rent during the Mid-Certification in July 2010. Respondent testified that she was not aware that she had to report the change in her rent to the department within 10 days. Clients must report changes in circumstance that potentially affect eligibility or benefit amount. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105. Respondent admittedly did not do so.

Respondent also testified that she did not receive the Notice of Case Action decreasing her FAP benefits as a result of her decrease in rent or the Verification Checklist mailed in July 2010. Respondent verified the department mailed the Notice of Case Action and Verification Checklist to the correct address. The department did not have any information in Respondent's file indicating that the Notice of Case Action and Verification Checklist were returned as undeliverable. The proper addressing and mailing of a letter creates a legal presumption of receipt which may be rebutted by evidence. *Stacey v Stankovich*, 19 Mich 688, 173 NW2d 225 (1969). Respondent

failed to provide credible, material, and substantial evidence to rebut the presumption of receipt.

Based on the evidence and testimony available during the hearing, the Department has established that the Respondent received a \$144.00 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 properly determined Respondent's FAP benefits and established that Respondent received a \$144.00 FAP overissuance for July and August 2010.

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 28, 2010

Date Mailed: December 28, 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 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.

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