

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

IN THE MATTER OF:



Reg. No.: 2012-17808
Issue No.: 1031
Case No.: [REDACTED]
Hearing Date: May 16, 2012
County: Oakland (63-02)

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claimant's request for a hearing. After due notice, a in-person hearing was held on May 16, 2012, from Detroit, Michigan. Participants on behalf of Claimant included [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED].

ISSUE

Did Claimant receive an overissuance of program benefits that the Department is entitled to recoup?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. During the period of July 1, 2011, through August 31, 2011, Claimant received benefits for:

- | | |
|--|---|
| <input checked="" type="checkbox"/> Family Independence Program (FIP). | <input type="checkbox"/> State Disability Assistance (SDA). |
| <input type="checkbox"/> Food Assistance Program (FAP). | <input type="checkbox"/> Child Development and Care (CDC). |
| <input type="checkbox"/> Medical Assistance (MA). | |

2. The Department determined that Claimant received a
 FIP FAP MA SDA CDC overissuance in the amount of \$364 during the period of July 1, 2011, through August 31, 2011.

3. The overissuance was due to Department error. client error.

4. On October 1, 2011, the Department sent notice of the overissuance and a repayment agreement to Claimant.
5. On November 9, 2011, Claimant filed a hearing request, protesting the Department's recoupment action.

CONCLUSIONS OF LAW

Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 42 USC 601, *et seq.* The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10, *et seq.*, and 1999 AC, Rule 400.3101 through Rule 400.3131. FIP replaced the Aid to Dependent Children (ADC) program effective October 1, 1996.

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 (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, *et seq.*, and 1999 AC, R 400.3001 through Rule 400.3015.

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105.

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, is established by 2004 PA 344. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.10, *et seq.*, and 2000 AACCS, R 400.3151 through Rule 400.3180.

The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, the Child Care and Development Block Grant of 1990, and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The program is implemented by Title 45 of the Code of Federal Regulations, Parts 98 and 99. The Department provides services to adults and children pursuant to MCL 400.14(1) and 1999 AC, R 400.5001 through Rule 400.5015.

A client/CDC provider error overissuance (OI) occurs when the client received more benefits than they were entitled to because the client/CDC provider gave incorrect or

incomplete information to the department. BAM 715. This includes failing to report a change. A Department error OI is caused by incorrect actions (including delayed or no action) by Department processes. BAM 705. When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the overissuance. BAM 700.

Department error OI's are not pursued if the estimated OI amount is less than \$125 per program. BAM 700.

In the current case, the Department contends that claimant had not reported income as required by policy; this income was incorrectly budgeted by the Department, and claimant was issued more FIP benefits than he was legitimately entitled to and these benefits need to be recouped.

Claimant contends that he reported his income and should not have to return benefits for a Department mistake.

Unfortunately, even if claimant did report and the Department made a mistake, this would not normally change the recoupment prospects. BAM 700 states that the Department must pursue any OI that was the result of Department error if the amount is above \$125. Claimant's OI is allegedly above that amount. Therefore, the OI must be recouped, regardless of whose fault the error was, if the Department can satisfactorily prove the recoupment amount to the Administrative Law Judge.

Claimant has satisfactorily proven that the case was Department error; the Department admitted that claimant had turned in his income proofs to his JET worker and that worker failed to turn the documents over to the Department. Based on the circumstances, the undersigned is satisfied that claimant had fulfilled his reporting requirements.

However, in the current case, the Department has not yet proven the amount of the recoupment.

While claimant admitted that he most likely received more benefits than allowed, claimant also alleged expenses related to the self-employment income received.

Countable income from self-employment equals the total proceeds **minus** allowable expenses of producing the income. Allowable expenses are the higher of 25 percent of the total proceeds, or actual expenses if the client chooses to claim and verify the expenses. BEM 502.

The Department admitted that it knew at the time of the action that income in question was from self-employment. However, the Department then proceeded to factor that income into a recoupment budget and made no effort to determine whether there were allowable expenses. As countable income, by definition, is the net proceeds of self-employment, the Department erred when it assumed there were no expenses and

proceeded to recoupment. Before recoupment, claimant should have been given a chance to show expenses. If claimant did not claim expenses, recoupment could proceed along normal lines; however claimant still needs to be given the chance. Therefore, as claimant was not given the chance to prove expenses in relation to self-employment income, the Department was incorrect to issue a recoupment, and must recalculate the recoupment amount.

Based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, the Administrative Law Judge concludes that Claimant

did receive an overissuance for FIP FAP MA SDA CDC benefits in the amount of \$ _____ that the Department is entitled to recoup.

did not receive the overissuance for which the Department presently seeks recoupment.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department

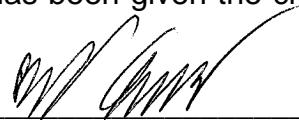
did act properly. did not act properly.

Accordingly, the Department's decision is AFFIRMED REVERSED for the reasons stated on the record.

Recoupment of FIP benefits is DENIED at the current time.

THE DEPARTMENT IS ORDERED TO DO THE FOLLOWING WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Supplement to claimant any FIP benefits already recouped as a result of the above-stated matter.
2. Allow claimant the opportunity to provide proof of expenses in relation to the self-employment income at issue in the current case.
3. Initiate recalculation of the recoupment after claimant has been given the chance to provide proof of expenses.



Robert J. Chavez
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: May 30, 2012

Date Mailed: May 30, 2012

NOTICE: Michigan Administrative Hearing System (MAHS) 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. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request. (60 days for FAP cases)

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.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

RJC/pf

cc:

