

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-26808
Issue No.: 3052
Case No.: [REDACTED]
Hearing Date: May 2, 2012
County: Gladwin

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

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 telephone hearing was held on May 2, 2012 from Lansing, Michigan. Participants on behalf of Claimant included Claimant's attorney [REDACTED] (P27849). Participants on behalf of Department of Human Services (Department) included [REDACTED] (Recoupment Specialist).

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 December, 2010 through November, 2011, Claimant received Food Assistance Program (FAP) and State Disability Assistance (SDA) benefits.
2. On October 13, 2010, the Department mailed Claimant a Redetermination form (DHS-1010) in order to review his continued eligibility for benefits.
3. On or about November 12, 2010, Claimant returned the DHS-1010 which indicated that Claimant lives with his parents and the three group members purchase and prepare food together. The completed DHS-1010 also noted that Claimant receives monthly SDA income [REDACTED] and that his parents each collect Retirement, Survivors and Disability Insurance (RSDI) [REDACTED] respectively).

4. The Department did not add Claimant's parents as group members to his case until a redetermination on November 7, 2011.
5. Based on the group size of 3 (three), the household countable income was [REDACTED] during the period of December 1, 2010 through November 30, 2011.
6. The Department calculated that Claimant received an overissuance of FAP benefits [REDACTED] per month for a total of [REDACTED] during the period of December 1, 2010 through November 30, 2011.
7. The overissuance was due to Department error.
8. On January 5, 2012, the Department sent notice of the overissuance and a repayment agreement to Claimant.
9. On January 10, 2012, Claimant filed a hearing request, protesting the Department's recoupment action.¹

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 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 1997 AACR 400.3001-3015.

Policy provides that the Department should determine who must be included in the FAP group prior to evaluating the nonfinancial and financial eligibility of everyone in the group. BEM 212. FAP group composition is established by determining all of the following: (1) who lives together; (2) the relationship(s) of the people who live together; (3) whether the people living together purchase and prepare food together or separately and (4) whether the person(s) resides in an eligible living situation. BEM 212.

The relationship(s) of the people who live together affects whether they must be included or excluded from the group. BEM 212. First, the Department will determine if they **must** be included in the group. BEM 212. If they are **not** mandatory group members, then the Department will determine if they purchase and prepare food together or separately. BEM 212. Children include natural, step and adopted children. BEM 212.

For all assistance programs, when a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the overissuance (OI). BAM 700. An

¹On his hearing request, Claimant indicated the following, "I go to the grocery store and buy my groceries. I may go to the grocery store with my parents but I use my money to buy my groceries. I prepare my own food and eat my own food. I do not believe I should be disqualified from receiving assistance."

overissuance (OI) is the amount of benefits issued to the client group or CDC provider in excess of what they were eligible to receive. BAM 700.

OIs are caused by either department error or by client error. BAM 700. For all programs, a department error OI is caused by incorrect action (including delayed or no action) by DHS staff or department processes. BAM 700. Some examples of OIs that occur due to department error are: (1) the department failed to use or incorrectly used available information; (2) the department misapplied policy; (3) the department, through its local office or staff member, delayed taking some action; (4) there was a computer or machine error; (5) information was not shared between department divisions and (6) data exchange reports were not acted upon timely. BAM 700.

When the type of OI is unable to be identified, it shall be recorded as a department error. BAM 700. For FAP, department error OIs are not pursued if the estimated OI amount is less than \$125 per program. BAM 700. The department error threshold was lowered to \$125 for FAP retroactive back to August 1, 2008. BAM 700.

For FAP only, the amount of EBT benefits received in the OI calculation is the gross (before Automated Recoupment (AR) deductions) amount issued for the benefit month. BAM 700. If the FAP budgetable income included FIP/SDA benefits, the department will use the grant amount actually received in the OI month. BAM 700. The department will use the FIP benefit amount when FIP closed due to a penalty for non-cooperation with employment-related activity or child support. BAM 705, p. 6.

When determining budgetable income for FIP, SDA, CDC and FAP, the following policies apply. If improper budgeting of income caused the OI, the department will use actual income for the past OI month for that income source. BAM 700. Income received weekly or every other week will be converted to a monthly amount. BAM 700. Except for FAP only, income is not converted from a wage match for any type of OI. BAM 700. Any income properly budgeted in the issuance budget remains the same in that month's corrected budget. BAM 700.

For FAP only, if the FAP budgetable income included FIP/SDA benefits, the department will use the grant amount actually received in the OI month. BAM 705. The department will use the FIP benefit amount when FIP closed due to a penalty for non-cooperation in an employment-related activity. BAM, Item 705, p. 6.

In this case, the department is requesting recoupment for an alleged FAP overissuance in the amount of [REDACTED] for the period of December 1, 2010 through November 30, 2011. During this time period, Claimant received FAP benefits but his parent's income was not properly budgeted. The department erred when it calculated Claimant's FAP after it failed to properly include Claimant's parents to the household group. Had the Department included the RSDI income from Claimant's parents during this time period, Claimant would not have been eligible for FAP due to excess income. As a result, Claimant received an overissuance of FAP benefits in the amount [REDACTED] the period of December 1, 2010 through November 30, 2011. Claimant was not legally entitled to receive FAP benefits during this period.

As stated above, Department policy indicates that when a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the overissuance. BAM 700. In this case, the error was a department error, as the appropriate action was not taken timely by the department staff. Department error overissuances are recouped if the amount is more than [REDACTED]. BAM 700. The overissuance in this case is [REDACTED], so it must be recouped by the department.

Accordingly, this Administrative Law Judge finds that the evidence presented by the department shows that Claimant is responsible for repayment of the overissuance from December 1, 2010 through November 30, 2011.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant received an overissuance of FAP benefits for the time period of December 1, 2010 through November 30, 2011, that the department is entitled to recoup.

The department is therefore entitled to recoup FAP overissuance of [REDACTED] from Claimant.

It is SO ORDERED.

/s/ _____
C. Adam Purnell
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: 5/24/12

Date Mailed: 5/24/12

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.

The 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.

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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 affect 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

CAP/ds

