

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201351940
Issue No: 3052
Case No: [REDACTED]
Hearing Date: July 25, 2013
Ionia County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne D. Sonneborn

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon Claimant's request for a hearing received by the Department of Human Services (department) on May 31, 2013. After due notice, a telephone hearing was held on July 25, 2013. Claimant appeared and provided testimony. The department was represented by [REDACTED], an eligibility specialist with the department's Ionia County office and [REDACTED], a recoupment specialist with the department's central office in Lansing, Michigan.

ISSUE

Whether Claimant received an over-issuance (OI) of Food Assistance Program (FAP) benefits that the department is entitled to recoup?

FINDINGS OF FACT

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

1. Claimant was a recipient of FAP benefits at all times relevant to this matter.
2. On April 24, 2010, the department discovered that, due to agency error, the department failed to budget Claimant's reported unearned income (unemployment compensation benefits) in determining Claimant's eligibility for FAP benefits for the benefit period of June 1, 2009 through August 31, 2009. (Department Exhibits 1-6)
3. Claimant received an over-issuance of FAP benefits in the amount of \$771.00 for the period of June 1, 2009 through August 31, 2009. (Department Exhibit 4)

4. On May 21, 2013, the department mailed Claimant a written notice (DHS-4358-A) stating that she received an over-issuance of FAP benefits in the amount of \$771.00 for the period of June 1, 2009 through August 31, 2009 as a result of agency error. (Department Exhibit 7)
5. On May 31, 2013, Claimant submitted a hearing request, protesting the department's determination that she must repay the FAP over-issuance. (Department Exhibit 7)

CONCLUSIONS OF LAW

Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. Department of Human Services Bridges Administrative Manual (BAM) 600 (2011), p. 1. The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in sections 400.901 to 400.951 of the Michigan Administrative Code (Mich Admin Code). An opportunity for a hearing shall be granted to an applicant who requests a hearing because his claim for assistance is denied. Mich Admin Code R 400.903(1).

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 earned and unearned income available to the client 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 over-issuance 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 over-issuance 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 over-issuance. BAM 700.

Department errors are caused by incorrect actions by the Department. BAM 705. Department error over-issuances are not pursued if the estimated over-issuance is less than \$125.00 per program. BAM 705. The agency error threshold was raised to \$250.00 from \$125.00 with an effective date of December 1, 2012. BAM 705.

In this case, Claimant was a recipient of FAP benefits in 2009 and, due to department error, she received an over-issuance of FAP benefits in the amount of \$771.00 for the period of June 1, 2009 through August 31, 2009.

At the July 25, 2013 hearing, the department's representative, recoupment specialist [REDACTED], testified that Claimant's caseworker failed to properly budget Claimant's receipt of unemployment compensation benefits despite Claimant having timely reported her receipt of such income. Claimant testified that she understood it was department policy to recoup an over-issuance of FAP benefits despite that over-issuance having been the result of department error – however, Claimant questioned the length of time that it has taken the department to initiate this recoupment effort. In response, [REDACTED] testified that department policy, specifically BAM 705, permits the department to initiate a recoupment of an over-issuance as a result of agency error so long as the agency error occurred within one year prior to the department's discovery of that error.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). Moreover, the weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record and finds that, based on the competent, material, and substantial evidence presented during the July 25, 2013 hearing, the department properly determined that Claimant received an over-issuance of FAP benefits in the amount of \$771.00 for the period of June 1, 2009 through August 31, 2009 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 that Claimant received an over-issuance of FAP benefits in the amount of \$771.00 for the period of June 1, 2009 through August 31, 2009 which the department is required to recoup. Accordingly, the department's recoupment of Claimant's over-issuance of FAP benefits in the amount of \$771.00 is **UPHELD**.

It is SO ORDERED.

/s/ _____
Suzanne D. Sonneborn
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: July 31, 2013

Date Mailed: July 31, 2013

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 60 days of the filing of the original request.

The Claimant may appeal this 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 errors, or other obvious errors in the hearing decision that affect the substantial rights of Claimant;
 - The failure of the ALJ to address other relevant issues in the hearing decision.

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A request for a rehearing or reconsideration must be submitted through the local DHS office or directly to MAHS by mail at:

Michigan Administrative Hearings System
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, MI 48909-07322

SDS/aca

cc:

