

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201313755
Issue No: 1030, 3020
Case No: [REDACTED]
Hearing Date: December 20, 2012
Wexford County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne D. Sonneborn

AMENDED HEARING DECISION AND ORDER

On December 27, 2012, a Hearing Decision and Order was issued with errors in the Hearing Decision and Order. The Hearing Decision and Order is amended as follows:

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 November 19, 2012. After due notice, a telephone hearing was held on December 20, 2012, at which Claimant appeared and provided testimony. The department was represented by [REDACTED], a family independence manager with the department's Wexford County office, and [REDACTED], a recoupment specialist with the department's Kent County office.

ISSUE

Whether the department acted properly in trying to recover an over issuance of Food Assistance Program (FAP) benefits and Family Independence Program (FIP) benefits that Claimant 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. Claimant was a recipient of FAP and FIP benefits at all times relevant to this matter.
2. During the period of August 1, 2011 through March 1, 2011, Claimant received court-ordered child support payments, the receipt of which Claimant failed to report to the department despite her signed acknowledgement in redetermination forms and an assistance application of her obligation to timely report any

changes in her monthly income amount. (Department Exhibits D, E, F, G, H, I, J, K)

3. As a result of Claimant's failure to timely and accurately report unearned income from her receipt of child support payments, the department determined that Claimant received an overissuance of FIP benefits in the amount of \$ [REDACTED] during the month of October 2010 and an overissuance of FAP benefits in the amount of \$ [REDACTED] during the period of October 1, 2010 through March 31, 2011. (Department Exhibits D, E, F)
4. On October 18, 2012, the department sent Claimant written notice of the FIP and FAP overissuances (DHS-4358-A), requesting that she repay them. The Notices further informed Claimant that her failure to pay the balance of the overissuances by October 30, 2012 would result in the department's recovery of the balances through administrative recoupment – specifically, a reduction in Claimant's FAP benefits to \$ [REDACTED] per month effective November 1, 2012. (Department Exhibits A, B, C, L)
5. On November 14, 2012, Claimant submitted a hearing request, protesting the department's determination that she must repay the FIP and FAP overissuances that she received due to client error. (Request for Hearing)
6. On December 27, 2012, after the hearing was held in this matter and after a Hearing Decision was issued, the department determined that its previous calculations were erroneous and that, in fact, Claimant **did not receive an overissuance of FIP benefits** and that Claimant received an overissuance of FAP benefits in the amount of \$ [REDACTED] not \$ [REDACTED] during the period of October 1, 2010 through March 31, 2011. (Department Exhibit M)

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 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 of that decision. 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).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 USC 601, *et seq.* The Department of Human Services (DHS or department) administers the FIP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3101-3131. The FIP program replaced the Aid to Dependent Children (ADC) program effective October 1, 1996. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

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.

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. Department error overissuances are not pursued if the estimated overissuance is less than \$125 per program. BAM 700. 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 unless the client group is active for the overissuance program, or the overissuance is a result of a quality control audit finding. BAM 700.

In this case, Claimant was a recipient of FIP and FAP benefits during the time period in question and received an overissuance of FIP benefits in the amount of \$ [REDACTED] during the month of October 2010 and an overissuance of FAP benefits in the amount of \$ [REDACTED] during the period of October 1, 2010 through March 1, 2011. Specifically,

during the period of August 1, 2011 through March 31, 2011, Claimant received court-ordered child support payments, the receipt of which Claimant failed to report to the department, resulting in Claimant's receipt of overissuances of FIP and FAP benefits during the time period in question until the department discovered its error.

At the December 20, 2012 hearing, Claimant testified that she has always reported her receipt of child support income on a timely basis. Claimant further testified that she has not received child support since 2010 because any child support income would have gone directly to the state due to Claimant being on a FIP grant. In response to Claimant's testimony, the department representative testified that the department relied on the computerized documentation provided by the Michigan Child Support Enforcement System (set forth in Department Exhibit G) which indicated that Claimant received child support income ordered direct as follows:

August 2010 - \$ [REDACTED]
September 2010 - \$ [REDACTED]
October 2010 - \$ [REDACTED]
November 2010 - \$ [REDACTED]
December 2010 - \$ [REDACTED]
January 2011 - \$ [REDACTED]
February 2011 - \$ [REDACTED]
March 2011 - \$ [REDACTED]

On December 27, 2012, after the hearing was held in this matter and after a Hearing Decision was issued, the department determined that its previous calculations were erroneous and that, in fact, Claimant **did not receive an overissuance of FIP benefits** and that Claimant received an overissuance of FAP benefits in the amount of \$ [REDACTED] not \$ [REDACTED] during the period of October 1, 2010 through March 31, 2011.

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). In evaluating the credibility and weight to be given the testimony of a witness, the fact-finder may consider the demeanor of the witness, the reasonableness of the witness's testimony, and the interest, if any, the witness may have in the outcome of the matter. *People v Wade*, 303 Mich 303 (1942), *cert den*, 318 US 783 (1943).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record and finds, based on the competent, material, and substantial evidence presented during and after the hearing, the department has established that, due to client error, Claimant received an overissuance of FAP benefits in the amount of \$ [REDACTED] for the period October 1, 2010 through March 31, 2011, both of 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 due to client error, Claimant received **an overissuance of FAP benefits in the amount of \$ [REDACTED]** for the period October 1, 2010 through March 31, 2011. Accordingly, the department's recoupment of overissued FAP benefits is **UPHELD**.

It is **SO ORDERED**.

/s/

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

Date Signed: January 2, 2013

Date Mailed: January 3, 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/cr

cc:

