



Ohio Department of Job and Family Services

Administrative Appeal Decision

APPELLANT:**CASE NO.****APPEAL NO(S).** 1143690**DOCKET NO.** 2003-AA-1234

By request received December 26, 2003, Appellant has requested an Administrative Appeal of a state hearing decision rendered December 10, 2003. The issue raised on this Administrative Appeal is whether the Portage County Department of Job and Family Services (Agency) was correct in reducing a monthly Ohio Works First (OWF) grant to recoup an overpayment of benefits that occurred in 1992. The state hearing decision found that a first demand letter had been mailed in 1994 and that a state hearing was not requested at that time and that Agency is correct to pursue collection against current benefits received. This Administrative Appeal Decision Affirms the state hearing decision.

SUMMARY OF CASE

The hearing record indicates Appellant receives OWF benefits through Agency on behalf of an assistance group (AG) of three, including Appellant and two children, and that, as a result of an audit by the Auditor of State, Agency learned of an overpayment of benefits for the period of March 1, 1992, through May 31, 1992, in the amount of \$1,239. The overpayment occurred while Appellant resided in Summit County. The overpayment was discovered August 16, 1994, and disregards were allowed in the calculation of the overpayment. Agency mailed a first demand letter November 3, 1994, that contained notification of hearing rights. Appellant did not request a state hearing from the demand letter. For reason not explained in the state hearing decision, the claim was suspended in November, 1995. Agency removed the claim from suspension in October, 2003, and, on October 10, 2003, mailed a notice proposing to reduce OWF benefits to recoup the overpayment.

Appellant acknowledged receiving the notices, but questioned why Appellant's spouse, who had the income, was not pursued for the recovery. Appellant asserted Agency had attached the tax refund for spouse and had applied \$400 toward the repayment. Appellant asserts the overpayment was the fault of Agency so Appellant should not be responsible for repayment.

HEARING DECISION

The state hearing decision found that the original notice was not appealed, therefore, the subject of the existence of the overpayment and the original amount are not appealable, and that Agency is correct to pursue collection of the overpaid amount of benefits, including through the grant reduction of benefits as permitted in regulations.

REQUEST FOR ADMINISTRATIVE APPEAL

Appellant submitted the pre-printed Administrative Appeal Request which asserts the hearing decision relies upon a misapplication of law or rule.

ANALYSIS

Ohio Administrative Code (OAC) 5101:6-8-01 allows for an Administrative Appeal from a state hearing decision. The Administrative Hearing Examiner is required to examine the decision, the information supplied on appeal and the record and/or tape of the hearing if appropriate. If the initial decision contains no error that affects the outcome of the appeal the decision is to be affirmed. If the decision contains an error that resulted in an outcome adverse to the individual the decision is to be reversed. OAC 5101:1-23-70, as correctly cited by the state hearing decision, defines "erroneous payment" as payment of cash assistance to an AG that was not eligible to receive the assistance. The rule cites to the definition found in Ohio Revised Code (ORC) 5107.76.

ORC 5107.76 requires the collection of erroneous payments, and permits, as a method of collection of the overpayment amount, reducing benefit amounts, or initiating a civil action against the members of the assistance group. OAC 5101:6-3-02(B) limits a state hearing request to not more than ninety calendar days following the issuance of notice regarding the adverse action. As found in the state hearing decision, the notification of the existence of the erroneous payment was mailed August 16, 1994. As Appellant failed to request a state hearing, the establishment of the overpayment is not subject to review through a state hearing. The only issue to address is the current amount of the erroneous payment (also referred to as an "overpayment") based upon verified payments made following the initial establishment of the erroneous payment amount. Appellant asserted, but did not provide any corroborative evidence for, a capture of refund from the internal revenue services (federal income tax). The only evidence provided at the state hearing was that Agency recovered \$37 by reducing the grant amount for the month of December, 2003.

I cannot find that the state hearing decision is contrary to the weight of evidence provided at the state hearing or that the state hearing decision relies upon a misapplication of law or rule.

DECISION

The state hearing decision regarding proposed collection of an erroneous payment of OWF benefits and related to Appeal Number 1143690 is AFFIRMED.

James R. Skidmore, Attorney-at-Law
Administrative Hearing Examiner

Marcia K. Slotnick, Attorney-at-Law
Chief Administrative Hearing Examiner
Office of Legal Services on behalf of
Thomas J. Hayes, Director

DATE OF ISSUANCE January 7, 2004

This Administrative Appeal Decision is the final administrative decision on your case from the Ohio Department of Job and Family Services. If you disagree with this decision, you may have the right to appeal to common pleas court pursuant to Section 5101.35 of the Ohio Revised Code. Your appeal must be filed within thirty days of the date this decision was issued to you. If you have questions about appealing to a court, contact your attorney, local legal aid society, or bar association. If you want information about free legal services, you can call the Ohio State Legal Services Association, toll free, at 1-800-589-5888.

cc: Director, Portage County Department of Job and Family Services
Dorothy Smith, Office of Legal Services
Hearings Supervisor
Bureau of State Hearings
Ann Kniep
Appellant