

STATE HEARING DECISION

ODHS 4005 (Rev. 9/94)

County FRANKLIN	District Hearings Section COLUMBUS	Assistance Group Name		Assistance Group Number
Place of Hearing FRANKLIN CDHS	Initial Hearing Date 11/03/2003	Rescheduled Postponed to 01/05/2004	Rescheduled Postponed to 12/15/2003	Rescheduled Postponed to

Appellant/Representative	Appellant Representation
	Local Agency Representation Rhonda Daniels

Date Notice Mailed 09/29/2003	Date Received by Local Agency	Date Received by ODHS 10/14/2003	Date Appeal Summary Received	Date Scheduling Notice Mailed 12/26/2003
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Appeal Number(s)/Program(s) 1142482/FSOP
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Notice to Appellant

This is the official report of your hearing and is to inform you of the decision and order in your case. All papers and materials introduced at the hearing or otherwise filed in the proceeding make up the hearing record. The hearing record will be maintained by the Ohio Department of Job and Family Services. If you would like a copy of the official record, please telephone the Bureau of State Hearings at 1-866-ODJFS-4-U (1-866-635-3748); and choose option number 1 from the main menu.

If you believe this state hearing decision is wrong, you may request an administrative appeal by writing to: Ohio Department of Job and Family Services, Office of Legal Services, 30 East Broad Street, 31st Floor, Columbus, Ohio 43215-3414 or FAX (614) 728-9574. Your request should include a copy of this hearing decision and an explanation of why you think it is wrong. Your written request must be received by the Office of Legal Services within 15 calendar days from the date this decision is issued. *(If the 15th day falls on a weekend or holiday, this deadline is extended to the next work day.)* During the 15-day administrative appeal period you may request a free copy of the tape recording of the hearing by contacting the district hearings section.

If you want information on free legal services but don't know the number of your local legal aid office, you can call the Ohio State Legal Services Association, toll free, at 1-800-589-5888, for the local number.

ISSUE SECTION:

The Food Stamp program requires that the county agency establish and collect a claim against any assistance group that has received more food stamp benefits than it is entitled to receive. A claim includes an overpayment caused by the county agency, or caused by the county agency's failure to take action.

By adverse notice dated 9-29-03 the Franklin County Department of Job and Family Services (Agency) demanded repayment of \$1,981.00 in food stamps erroneously issued due to Agency error between 4-1-02 and 2-28-03. The overpayment occurred due to earned income from employment known to the Agency which was not included in the determination of the food stamp allotment. The Appellant argues that she should not have to repay an error caused by the Agency. The Hearing Officer does not find the Appellant's argument persuasive in light of the food stamp certification regulations which state that all overpayments must be recovered, which includes inadvertent household error as well as agency caused errors.

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Appeal(s) OVERRULED 1142482	Date Issued 01/08/2004	Compliance
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Distribution: Original to appellant, one copy to local agency; one copy to district Hearing section; one copy to district office; two copies to State Hearings. *(Photocopy to appellant's authorized representative, if any, and to ODHS units as appropriate.)*

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The Hearing Officer finds that due to income in excess of the gross standard that in 9-02 that there was no financial eligibility for food stamp benefits. The Agency erred in determining that there was eligibility for a \$10.00 food stamp allotment in 9-02. The Hearing Officer recommends that that there be an upward revision of the food stamp overpayment to \$1,991.00 and that the demand for repayment be upheld.

PROCEDURAL MATTERS

The Appellant requested that the state hearing scheduled for 12-15-03 be rescheduled. The Columbus Regional Hearing Supervisor determined good cause for the request and the hearing was rescheduled for 1-5-04.

FINDINGS OF FACT:

1. The food stamp assistance group consists of the Appellant who is 27 years old and one child.
2. By data match dated 1-21-02 the Agency received notice that the Appellant is employed. She has been employed since 1-21-02, see exhibits R1 and R2.
3. Subsequent to receipt of the data match the Agency did not adjust the Appellant's food stamps to reflect income from employment.
4. Between 3-1-02 and 2-28-03 based on zero net adjusted income, for an assistance group of two, the Appellant received the food stamp maximum of \$248 per month from 4-02 through 9-02; and \$256 from 10-02 through 2-03, see exhibits I 1- I 4.
5. For the following months the Appellant had the following gross monthly income: 3-02 \$94.00; 4-02 \$840.00; 5-02 \$375; 6-02 \$1,405; 7-02 \$1,520.00; 8-02 \$400.00; 9-02 \$1,354; 10-02 \$1,440.00; 11-02 \$1,728.00; 12-02 \$1,575.00; 1-03 \$1,760.00; and 2-03 \$800.00, see exhibits N1-N9.

CONCLUSIONS OF POLICY:

Policy

1. Ohio Administrative Code rule section *Archive* 5101:4-4-31 Food stamps: anticipating income.

(X) Income standards - AGs subject to gross and net income standards

An AG which has no elderly or disabled member as described in rule 5101:4-1-03 of the Administrative Code shall have its gross monthly income, as calculated in accordance with this rule, compared to the monthly gross income eligibility standard for the appropriate AG size (FSP-10) to determine eligibility for the month. If the AG's gross monthly income exceeds the appropriate income standard, the AG is ineligible to participate in the food stamp program. If the AG's gross monthly income is equal to or less than the standard for the appropriate AG size, the AG shall then have its net monthly income, as calculated in this rule, compared to the net monthly income eligibility standard for the appropriate AG size (FSP-11) to determine eligibility for the month. If the AG's net income is equal to or less than the appropriate net income standard, the AG's level of benefits is determined, if otherwise eligible. If the gross income is more than the standard for the appropriate AG size, the AG is ineligible and the AG is either terminated or denied at that point.

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2. Food stamp transmittal letter 237 effective 10-1-01 set the gross monthly income standard for an assistance group of two at \$1,258; with Food stamp transmittal letter 243 effective 10-1-02 the gross monthly income standard increased to \$1,294.00.

2. Ohio Administrative *Archive* 5101:4-4-19 Food stamps: Countable income.

Effective Date: June 1, 2001.

Except for the exclusions, and payments which are listed in rule 5101:4-4-13 of the Administrative Code, all payments received by AG members are income for food stamp purposes. Income is categorized as earned or unearned.

(A) The following types of income are considered earned.

(1) All wages and salaries of an employee.

3. *Archive* 5101:4-4-23 Food stamps: deductions from income.

Effective Date: October 1, 2002 (Emergency).

(E) Monthly shelter costs in excess of fifty per cent of the AG's income after all other deductions have been allowed.

(K) Verification of deductions. Shelter and utility expenses, shelter and utility expenses for an unoccupied home, other shelter expenses, dependent care expenses, and legal obligation and actual child support payments shall be verified.

3. Ohio Administrative Code section 5101:4- 8 -15 Food stamps: Claims against assistance groups.

Effective Date: December 1, 2002

(A) A recipient claim is an amount owed because of benefits that are overpaid or benefits that are trafficked. The county agency shall establish and collect a claim against any AG that has received more food stamp benefits than it is entitled to receive. This claim is a federal debt subject to this and other regulations governing federal debts

(H) Administrative error claims

A claim shall be handled as an administrative error claim if the overpayment was caused by county agency action or failure to take action.

(I) Instances requiring a claim determination: administrative error claims

Instances of administrative error which may result in a claim include, but are not limited to, the following:

(1) The county agency failed to take prompt action on a change reported by the AG.

(2) The county agency incorrectly computed the AG's income or deductions, or otherwise assigned an incorrect allotment.

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4. Ohio Administrative Code rule section 5101:4-8-17 Food stamps: Calculating the claim amount.

(C) If, due to a misunderstanding or inadvertent error on the part of the assistance group, the assistance group failed to report a change in its assistance group circumstances within ten days of the date the change became known to the assistance group, the first month affected by the assistance group's failure to report shall be the first month in which the change would have been effective had it been timely reported. When calculating the claim amount, the county agency shall allow the maximum reporting allowance of ten days from the date of change plus the maximum allowance for notice of adverse action of fifteen days. Therefore, for the purposes of claim calculation, a change cannot be effective sooner than twenty-five days from the date the change occurred.

(D) If the assistance group timely reported a change, but the county agency did not timely act on the change, the first month affected by the county's failure to act shall be the first month the county agency should have made the change effective. Therefore, if a notice of adverse action was required but was not provided, the county agency shall assume that the maximum advance notice period would have expired without the assistance group requesting a fair hearing.

5. Ohio Administrative Code section 5101:4-8-19 Food Stamps: initiating collection action and managing claims.

(A) Initiating collection

County agencies must begin collection action on all claims unless the conditions under paragraph (K)(3) of this section apply. A county agency may opt not to establish and subsequently collect an overpayment that is not cost effective. For claims of one hundred twenty five dollars or less that cannot be recovered by reducing the assistance group's allotment (i.e., all claims against nonparticipating assistance groups) the county agency need not complete the ODJFS 7424 but must record the amount of the claim in the case file so that this amount may be used to offset any lost benefits that may be owed the assistance group's at a later date.

Analysis

1. Ohio Administrative *Archive* 5101:4-4-19 (A) and (B) states in relevant part that countable income for food stamp includes income from employment. In the present case the Hearing Officer finds as fact that the Appellant has been employed since 1-02. The Appellant agrees that she has been continuously employed, although she has changed jobs.

2. Ohio Administrative Code rule section 5101:4-8-17 (D) states in relevant part that if the assistance group timely reported a change, but the county agency did not timely act on the change, the first month affected by the county's failure to act shall be the first month the county agency should have made the change effective. Therefore, if a notice of adverse action was required but was not provided, the county agency shall assume

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that the maximum advance notice period would have expired without the assistance group requesting a fair hearing. In the present case the Agency Representative argues that 4-02 is the first month of overpayment as the income from employment was discovered on 1-21-02. Based on the 1-21-02 date of discovery allowing ten days for the change to be reported and fifteen days for the prior notice period to expire the Hearing Officer finds that the claim could have begun in 3-02. Review of gross earnings of \$94.00 for the month reveals that the Appellant's earnings in 3-02 did not cause an overpayment for that month. The Hearing Officer finds that the Agency properly determined 4-02 as the beginning date of overpayment.

3. Ohio Administrative Code rule section *Archive* 5101:4-4-31 (X) states that an AG which has no elderly (60 years of age or older) or disabled (in receipt of Social Security) member shall have its gross monthly income compared to the monthly gross income eligibility standard for the appropriate AG size (FSP-10) to determine eligibility for the month. If the AG's gross monthly income exceeds the appropriate income standard, the AG is ineligible to participate in the food stamp program. In the present case the Hearing Officer finds that the Appellant's income is subject to comparison to the gross income standard as she 27 years old and is not elderly, and has not claimed to be disabled or reported receipt of Social Security due to disability. Upon review of the monthly income figures provided by the Appellant's employer, see exhibit N1-N9; and review of the corrected food stamp budgets, see exhibits J1-J3, the Hearing Officer finds that based on gross earnings of \$1,405 in 6-02; \$1,520 in 7-02; and \$1,354 in 9-02 that the Appellant's gross earnings were over the gross income standard of \$1,258 for her assistance group of two, and that based on gross earnings of \$1,440 in 10-02; \$1,728 in 11-02; \$1,575 in 12-02; and \$1,760 in 1-03 that the Appellants gross earnings were over the increased gross income standard of \$1,294 for her assistance group of two. The Hearing Officer finds that there was no financial eligibility for assistance in any of the listed months due to income in excess of the gross income test. Based on \$248 in food stamp benefits erroneously received in 6-02; 7-02; 9-02; and \$258 per month erroneously received in 10-02; 11-02; 12-02; and 1-03 that the Appellant was overpaid \$1,768.00 due to gross income test error.

3. *Archive* 5101:4-4-23 (E) allows for a deduction of monthly shelter costs in excess of fifty per cent of the AG's income after all other deductions have been allowed. Paragraph (K) specifies that shelter expenses used as a deduction shall be verified. In the present case the Agency Representative explained that a disregard for rent was not included in the corrected budget for 2-03, see exhibit J3, as there was no deduction for rent in the original food stamp certification, see exhibit K4. Based on \$800 in monthly income from employment, allowing the \$134.00 standard deduction, the 20% earned income disregard and the standard utility allowance of \$306.00 the Agency determined that the Appellant had \$453.00 in net adjusted monthly income and that she was eligible to receive \$120.00. Compared to the \$256.00 actually received results in a \$136.00 overpayment. The Appellant argues that she paid rent of \$247.00 in 2-03 and that she should be eligible for the deduction in the calculation of her eligibility for food stamps in 2-03. In the absence

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of documentation from the Appellant to support her claim of payment of rent, and as the original certification of food stamps does not reveal a deduction for rent, the Hearing Officer does not find the Appellant's argument persuasive. The Hearing Officer finds that the determination of \$453 in net adjusted monthly income and \$120.00 in monthly food stamp benefits is correct. The Appellant has no complaint with the determination of \$161.00 in food stamp eligibility for 4-02 as a deduction of \$247.00 for rent was used. The Hearing Officer finds that compared to the \$248.00 in food stamps received and the \$161.00 which should have been received that the Appellant was overpaid \$87 in 4-02. Based on the \$136 overpayment in 2-03 and \$87 overpayment in 4-02 the Hearing Officer finds that the total amount of overpayment is \$1,991.

4. Ohio Administrative Code section 5101:4- 8- 19 (A) states in relevant part that a county agency may opt not to establish and subsequently collect an overpayment that is not cost effective. For claims of one hundred twenty five dollars or less that cannot be recovered by reducing the assistance group's allotment (i.e., all claims against nonparticipating assistance groups) the county agency need not complete the ODJFS 7424 but must record the amount of the claim in the case file so that this amount may be used to offset any lost benefits that may be owed the assistance group's at a later date. In the present case the Appellant argues that she should not be pursued for recovery of the claim as she did nothing to cause the overissuance. She reported the change and the Agency received notice of the change through a data match. She should not have to repay an agency caused error. The Hearing Officer does not find the Appellant's argument persuasive in light of the above cited section which allows the Agency to forgo collection on only those claims less than \$125.00 that cannot be recovered by reducing the assistance group's allotment. The Hearing Officer recommends that the determination of food stamp overpayment and pursuit of recovery be upheld, and that the food stamp claim be revised by \$10 to \$1,991.00.

HEARING OFFICER'S RECOMMENDATIONS:

Based on the evidence and testimony presented at the state hearing it is recommended that the demand for repayment of \$1,991.00 be upheld.

FINAL ADMINISTRATIVE DECISION AND ORDER:

Finding that the Hearing Officer's decision is supported by policy and the evidence the recommendations above are adopted. Food stamp appeal 1142482 is **OVERRULED**.

APPENDIX:

Agency Exhibits:

A: Appeal summary.

B1-B2: Overpayment determination.

C: Excess payment referral.

D: Employment verification.

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E: Benefit recovery referral.
F: Comments.
G1-G2: Claim determination.
H: (No exhibit listed)
I-1- I4: Food stamp issuance history.
J1-J3: Food stamp budget history.
K1-K4: Food stamp budget
L1-L2: CRIS-e print-out.
M1-M2: Running record comments.
N1-N9: Employment verification.
O: Case number history.
P1-P3: Non-financial eligibility determination data.
Q: Notice history.
R1-R2: Employment match/data exchange inquiry.

Appellant Exhibits:

1: State hearing explanation.

Date Issued: 01/08/2004