

## STATE HEARING DECISION

ODHS 4005 (Rev. 9/94)

County <b>TUSCARAWAS</b>	District Hearings Section <b>CANTON</b>	Assistance Group Name		Assistance Group Number
Place of Hearing <b>TUSCARAWAS CDHS</b>	Initial Hearing Date <b>01/25/2001</b>	Rescheduled Postponed to <b>02/06/2001</b>	Rescheduled Postponed to <b>02/06/2001</b>	Rescheduled Postponed to

Appellant/Representative	Appellant Representation
	Local Agency Representation <b>Rick Wiley - Investigator</b>

Date Notice Mailed <b>12/30/1899</b>	Date Received by Local Agency <b>12/28/2000</b>	Date Received by ODHS <b>01/08/2001</b>	Date Appeal Summary Received <b>01/22/2001</b>	Date Scheduling Notice Mailed <b>01/26/2001</b>
Appeal Number(s)/Program(s) <b>1001169/OWF, 1001171/FS</b>				

### 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 hearing supervisor at the CANTON District hearing section at 1-800-686-1569.

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 43266-0423 or FAX (614) 752-8298. 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

#### Issue #1 Appeal 1001169 TANF

The agency has demanded repayment of a TANF overpayment from the appellant. The agency's demand was not upheld as the Hearing Officer found that the agency's action was not in accordance with regulations.

#### Issue #2 Appeal 1001171 FS

The agency has demanded repayment of a \$806.00 Food Stamp overissuance. The appellant does not take issue with the agency's action and no further consideration was given to this issue within.

### PROCEDURAL MATTERS

The appellant requested a hearing on 12/28/00 because the agency was seeking collection of a TANF

MBR

Appeal(s) <b>SUSTAINED 1001169 OVERRULED 1001171</b>	Date Issued <b>02/09/2001</b>	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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overpayment. On 1/12/01, a notice was mailed to the appellant setting a 1/25/01 hearing date. The appellant requested a reschedule and on 1/26/01, a notice was mailed setting a 2/6/01 hearing date. The agency's appeal summary was received on 1/22/01.

## FINDINGS OF FACT

### Undisputed Facts

1. A TANF (now called OWF) overpayment of \$986.00 occurred for 7/1/97 through 8/31/97 due to earned income. The overpayment was discovered on 10/17/97. The appellant and her ex-husband were members of the assistance group at the time the overpayment occurred.
2. The ex-husband signed the repayment agreement on 11/12/97. Three payments were made in 1999 and the overpayment balance is now \$816.00.
3. The appellant and her ex-husband divorced and the judgment entry filed 8/2/00 sets forth that the appellant will be solely responsible for and pay and save the husband harmless as regards the FS overissuance and that the husband will be solely responsible for and pay and save the wife harmless as regards the TANF overpayment. He was also ordered to pay child support.
4. The agency has contacted the ex-husband, who was the recipient payee, in regards to the TANF overpayment; however, he has not responded to the demand for repayment nor has the mail been returned to the agency. The agency will not honor the judgment entry and is seeking repayment for the TANF from the appellant.

## CONCLUSIONS OF POLICY

### Policy

OAC 5101:1-23-70 (J) (1) states that overpayments that occurred before 7/1/98 are subject to the provisions of appendix A.

OAC 5101:1-25-34 which is within appendix A mandates that the agency must first seek collection from the recipient payee and make reasonable efforts to locate as set forth in section (D) of this rule and have the legal ability to initiate collection. In effectuating legal process, full pursuit of all state remedies to recover the overpayment from the recipient is expected. The exceptions to this rule would be if the recipient is deceased or the debt has been discharged by bankruptcy.

OAC 5101:1-25-34 (E) mandates that until the agency determines that recovery of the overpayment, after following the prior procedures, cannot be obtained from the recipient payee, collection activities

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from other members of the overpaid group are suspended.

#### Analysis

After careful consideration of the evidence and law presented at the hearing, the Hearing Officer finds that the appellant was not the recipient payee and that the agency has to seek collection from the recipient payee and suspend collection activities from the other members. The appellant was divorced in 8/00. The agency, since the divorce, has contacted the ex-husband, who was the recipient payee, only once on 12/19/00 in the form of a letter which was not returned to the agency. The agency should also be securing child support as this was also court ordered. The agency has not provided any information which would establish that the ex-husband is deceased nor that the debt was discharged through bankruptcy. The agency has an obligation to make reasonable efforts to locate and to pursue all state remedies to recover the overpayment from the ex-husband and suspend collection efforts from the appellant until such time as those obligations have been met.

The judgment entry is an agreement between two parties and was not agreed upon by the agency. The fact that they had an agreement does not prevent the agency from collecting from the appellant, but only after the regulations as stated above, have been followed to the fullest.

Based on the aforementioned, the agency's action to seek collection from the appellant for the remainder of the TANF overpayment balance can not be upheld.

#### HEARING OFFICER'S RECOMMENDATIONS

##### Issue #1 Appeal 1001169 OWF

Based on the record developed at the hearing, the Hearing Officer recommends that the appeal be sustained and that the agency be directed to cease collection of the TANF overpayment from the appellant upon receipt of this hearing decision.

##### Issue #2 Appeal 1001171 FS

Based on the record developed at the hearing, the Hearing Officer recommends that the appeal be overruled as the appellant did not take issue with this action.

#### FINAL ADMINISTRATIVE DECISION AND ORDER

##### Issue #1 Appeal 1001169 OWF

Finding the Hearing Officer's decision to be supported by the evidence, the recommendations above are adopted, and appeal 1001169 is sustained.

##### Issue #2 Appeal 1001171 FS

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Finding the Hearing Officer's decision to be supported by the evidence, the recommendations above are adopted, and appeal 1001171 is overruled.

#### EXHIBITS

- A. Overpayment record
- B. Notice history with attached notice history detail
- C. Correspondence to the ex-husband dated 12/19/00; with attached correspondence to the ex-husband dated 1/15/99, demand letter sent to the ex-husband dated 11/7/97, correspondence to the ex-husband dated 11/25/98 and 10/30/97
- D. Demand Notice mailed to appellant 12/12/00
- E. Agreed Magistrate's Order/Judgment Entry filed 8/2/00, Case No. 1999 TC 06 0286
- F. ODJFS 7424, FS Claim Determination, date error discovered 10/17/97
- G. DHS 7095, OWF Overpayment Determination, date discovered 10/17/97, with attached budget computation

Date Issued: 02/09/2001