

In the matter of:

<u>Case Number:</u>	<u>County:</u>	
5022993769	WARREN	
<u>Appeal:</u>	<u>Program:</u>	<u>Disposition:</u>
1306203	FSOP	OVERRULED
No Compliance Required		
<u>Decision Date:</u>	02/08/2007	
<u>Request Date:</u>	09/12/2006	
<u>Hearing Officer:</u>	TINA DYEHOUSE	

State Hearing Decision

ISSUE SECTION:

Issue #1 – 1306203 (FSOP):

The Agency is required by law to collect all verified overpayments that result from a recipient receiving Food Stamp benefits for which she was not eligible. The Warren County Department of Job and Family Services (Agency) determined that the Appellant was overpaid \$1,876 From May 2005 to August 2005 due to household error. The Appellant started to receive private disability benefits, but the Food Stamps were not changed and the household was overpaid.

The Agency mailed the original overpayment notice on 8-10-05; the Appellant appealed the overpayment on 9-12-06. Rules allow ninety days from the date of a notice for appeal. So the appeal was untimely and I could not address whether the overpayment was correct. The Agency confirmed that the balance of the overpayment was \$1,876.

PROCEDURAL MATTERS:

On 8-10-05, the Agency mailed the original overpayment notice. On 9-12-06, the Bureau of State Hearings received the Appellant's written request for a state hearing. The hearing was scheduled for 10-3-06 and conducted on that date. But there was confusion about the issue for the hearing. Although the Appellant's hearing request indicated that she disagreed with having to repay \$1,876, the appeal was marked as a Food Stamp issue, not a Food Stamp overpayment. The Agency was not prepared for a Food Stamp overpayment and the Appellant agreed to reconvene the hearing.

The appeal was rescheduled for 10-10-06. The Appellant asked for a rescheduled hearing date to be held face-to-face. The appeal was rescheduled for 11-2-06, but I was only available for a phone hearing on that date, not face-to-face as requested by the Appellant. The Appellant asked to have the appeal rescheduled after 1-1-07, to be conducted face-to-face. The appeal was rescheduled again for 1-3-07 and reconvened on that date, face-to-face, at the Agency. All participants were sworn in: the Appellant; Julie Sanders, Agency representative at the 10-3-06 hearing; and Cyndi West, Agency representative on 1-3-07, at the reconvened hearing.

FINDINGS OF FACT:

1. From April 2005 through August 2005, the household consisted of the Appellant, her two children, and the Appellant's mother.
2. The Appellant started to receive disability benefits of \$247 per week from a private benefits company in 2005 (exhibit F).
3. On 7-27-05, the Agency received the results of a quality assessment case review of the Appellant's case. They determined that the Appellant had failed to report her disability benefits to the Agency.
4. The Agency recalculated the Food Stamp eligibility adding \$1,062 in income from the private disability benefit for May, June, July and August 2005. The Agency determined that the household was not eligible for any Foods Stamp assistance in the four overpayment months. So the overpayment amount for each month was \$450, the total amount of assistance received. The Agency determined that the total amount of the overpayment was \$1,876. (exhibit I)
5. On 8-10-06, the Agency mailed the overpayment notice to the Appellant. The Appellant received the notice. (exhibit Q)
6. The Agency had not collected any money on the overpayment, as of 1-3-07. The balance of the overpayment was \$1,876. (exhibits K & L)

CONCLUSIONS OF POLICY:

Policy

1. A Food Stamp overpayment occurs when a family is paid more in Food Stamp benefits than they are actually entitled to receive. The Agency is required to collect any claim that they have verified and established as a valid overpayment even if it is caused by the Agency's mistake, Ohio Admin. Code § 5101:4-8-15(A) (12-1-02) [7CFR 273.18].

Every Food Stamp overpayment fits into one of three categories – administrative (agency) error, inadvertent household error and intentional program violation. An inadvertent household error (IHE) claim is an overpayment that results from “a misunderstanding or unintended error” by the recipient §(C)(2). An administrative error is an overpayment that results from any incorrect action or failure to act by the county agency, §(C)(3). The Agency must establish a claim for overpayment within one month of the date of discovery, which is defined as the date all verification needed to process the claim is received, §(M).

2. An individual is allowed ninety calendar days from the mailing date on the notice to request a state hearing on an action of the Agency, Ohio Admin. Code § 5101:6-3-02(B)(1) (2003).
3. The hearing officer's findings of fact must be based only on the evidence presented at the hearing, per Ohio Admin. Code § 5101:6-7-01(C)(1) (2003). The Agency must show, by a preponderance of the evidence, that its action or inaction was correct according to Ohio rules § (C)(1)(c).

Analysis

Eligibility for Food Stamp benefits is based on need. To determine the monthly amount of food stamps, the Agency looks at income, household size, and shelter costs. If any of the numbers used to determine eligibility changes, the amount of an assistance group's benefit usually changes accordingly. If a household receives Food Stamp for which they are not eligible, there is usually an overpayment. The rules require collection of all established overpayments, whether the overpayment is the fault of the recipient or the Agency. So even if the Appellant had given the Agency timely verification, they would still be required to establish the overpayment.

The state hearing rules allow 90 days from the date of an action for appeal. Here, the Agency issued the overpayment notice on 8-10-05; the Appellant requested a state hearing on 9-12-06. The Appellant's request for appeal was more than 90 days from the overpayment notice. So, the issue of whether the overpayment was correct can no longer be addressed.

The Agency's evidence confirmed that as of 1-1-07, there had not been any payments. So the balance of the overpayment was \$1,876. The hearing decision affirms the overpayment balance of \$1,876.

To establish an overpayment, a county agency usually verifies all income received during the overpayment period to ensure that the income used is accurate. Here, the Agency used information from March and April 2005, prior to the overpayment period, to estimate a projected income (exhibit F). The payment stubs presented by the Appellant indicated that some months her actual income was lower (exhibit 2). So, I encourage the Agency to review the overpayment calculations. But I do not have any jurisdiction to rule on this appeal.

HEARING OFFICER RECOMMENDATIONS:

Issue #1 – 1306203 (FSOP):

Appeal number 1306203 should be OVERRULED.

FINAL ADMINISTRATIVE DECISION AND ORDER:

Issue #1 – 1306203 (FSOP):

Finding the hearing officer's decision to be supported by the evidence, the recommendation shown above is adopted. The appeal is OVERRULED.

Hearing Authority

February 8, 2007

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 CINCINNATI District hearing section at 1-866-635-3748.

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, Bureau of State Hearings, P.O. BOX 182825, Columbus, OH 43218-2825 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 Bureau of State Hearings 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.

Aviso a la Apelante

Esta es la decisión estatal administrativa de su caso. Todos los documentos y materiales presentados como prueba en la vista o de otra manera radicados componen el récord administrativo. El récord administrativo será mantenido por el Ohio Department of Job and Family Services.

Si usted cree que esta decisión estatal administrativa es errónea, usted puede solicitar una apelación administrativa escribiendo al: Ohio Department of Job and Family Services, Bureau of State Hearings, P.O. Box 182825, Columbus, Ohio 43218-2825 o facsímil (614) 728-9574. Su solicitud debe indicar por qué usted piensa que la decisión administrativa es errónea. Usted puede completar la solicitud de apelación incluida con esta decisión. Su solicitud escrita o formulario de apelación tiene que ser recibido por el Bureau of State Hearings dentro de los 15 días calendario desde la fecha en que esta decisión es expedida. (Si el 15to. día recae sobre un fin de semana o un día feriado, esta fecha límite es extendida al próximo día laborable). Durante el período de 15 días de apelación administrativa, usted o su representante pueden solicitar una copia gratuita del récord administrativo y de la grabación de la vista llamando al Bureau of State Hearings al 1-866-635-3748 (seleccione la opción 1 del menú principal).

Si usted quiere información sobre servicios legales gratuitos pero no sabe el número de su oficina local de servicios legales, usted puede llamar al Ohio State Legal Services Association, gratuitamente, al 1-800-589-5888, para el número local.

Appendix

Exhibits:

**OHIO DEPARTMENT OF JOB AND FAMILY SERVICES
BUREAU OF STATE HEARINGS**

Appellant:

- 1 – State hearing request
- 2 – Statements of payment from the private benefits company – 4 pp
- 3 – Pay stub, dated 7-1-05 (marked last pay stub by Appellant).
- 4 – Letter to Appellant from private benefits company, dated 9-8-05 – 2 pp
- 5 – Letter to Appellant from private benefits company, dated 9-16-05 – 2 pp

Agency:

Evidence entered on 10-3-06:

- A – Appeal summary
- B – Scheduling notice
- C – Food Stamp budget screens – 5 pp
- D – Running record comments, fair hearing request screens and scheduling notice – 13 pp

Evidence entered on 1-3-07:

- E – Appeal summary, dated 11-1-06
- F – Quality Assessment case finding and supporting documentation – 7 pp
- G – Food Stamp issuance history screen – 2 pp
- H – Food Stamp budget screens (May 2005 through August 2005) – 9 pp
- I – Corrected Food Stamp budgets – 8 pp
- J – Alleged Food Stamp issuance summary – 2 pp
- K – Benefit recovery claim payee screen
- L – Benefit recovery claim screen
- M – Benefit recovery referral
- N – Running record comments
- O – Notice of lost benefits – 2 pp
- P – Overpayment determination form
- Q – Notice history detail screens – 2 pp