

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

In the matter of:

<u>Case Number:</u>	<u>County:</u>	
5035477107	BUTLER	
<u>Appeal:</u>	<u>Program:</u>	<u>Disposition:</u>
1441258	FSOP	OVERRULED
Compliance Required		
Decision Date:	02/13/2009	
Request Date:	10/09/2008	
Hearing Officer:	TINA DYEHOUSE	

State Hearing Decision

ISSUE SECTION:

Issue #1 – 1441258 (OP):

The Agency must collect all verified overpayments that result from a recipient receiving Food Assistance Program benefits for which she was not eligible. The Butler County Department of Job and Family Services (Agency) determined that the Appellant was overpaid \$2,752 from August 2007 through August 2008 due to Agency error.

The evidence established that the Appellant started to receive Food Assistance Program benefits (formerly called Food Stamps) in August 2007, but the Agency did not use all of her income resulting in a Food Assistance Program overpayment. However, the overpayment amounts for November and December were not correct. The Agency should correct the overpayment amount before taking further collection action on the overpayment. The corrected total overpayment amount is \$2,718.

PROCEDURAL MATTERS:

On 9-25-08, the Agency mailed prior notice. On 10-9-08, the Bureau of State Hearings received the Appellant's written request for a state hearing. The hearing was scheduled for 12-4-08. At the Appellant's request, the hearing was rescheduled and conducted on 1-14-09, by conference call. All participants were sworn in: the Appellant; and Larry Rushing and Barbara Robinson, Agency representatives. I received the appeal summary on 11-19-08. The hearing was recorded digitally and stored on the network drive.

FINDINGS OF FACT:

1. The household consists of the Appellant and her two children, ages 12 and 9.
2. No one in the household is elderly or disabled.

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3. The Appellant was approved for Food Assistance Program benefits (formerly called Food Stamps) starting 8-15-07. The Appellant provided the Agency with pay stubs. The Appellant reported her full earnings. But the Agency did not use her commission earnings to determine the amount of her Food Assistance Program benefits.

4. From August 2007 through August 2008, the Appellant's rent was \$460 and she paid her utilities. The Agency used the standard utility allowance when determining her Food Assistance Program amounts (\$429 August 2007 through September 2007 and \$450 October 2007 through August 2008). (exhibit L)

5. The Appellant received the following amount of Food Assistance Program benefits: \$187 for August 2007; \$341 for September 2007; \$363 for October, November and December 2007; \$363 for January and February 2008; \$321 for March and April 2008; \$270 for May, June and July 2008 and \$212 for August 2008 (exhibit K).

6. The Agency verified the Appellant's wages using The Work Number, an online work registration site. The Appellant earned the following amounts: \$1,962, August 2007; \$1,422, September 2007; \$1,559, October 2007; \$1,305, November 2007; \$1,161, December 2007; \$1,922, January 2008; \$2,405, February 2008; \$1,811, March 2008; \$2,293, April 2008; \$1,920, May 2008; \$1,868, June 2008; \$1,859, July 2008; and \$3,090, August 2008. (exhibit E)

7. The Agency redetermined the household's eligibility for Food Assistance Program using the gross verified earned income. For August 2007 and January, February, April, May, June and August 2008, the Agency determined that the household's income was more than the gross income test for Food Assistance Program benefits so the household was not eligible for any of the assistance received in that month. So the overpayment amount for each of those months was the total amount of Food Assistance Program benefits issued to the Appellant.

8. For September 2007, the Agency recalculated the Food Assistance Program eligibility using the verified gross income of \$1,422. The overpayment was considered Agency error. The Agency deducted a \$284 earned income deduction and \$134 standard deduction from the gross income, for an adjusted income of \$1,004. The household qualified for a shelter deduction of \$387 because 50% of the adjusted income was less than the total shelter costs of \$889. The Agency then subtracted 30 % of the net adjusted income (\$617) from the maximum Food Assistance Program amount of \$408. The difference of \$222 was the household's corrected Food Assistance Program amount. The overpayment amount was \$119, the difference between the Appellant's actual Food Assistance Program benefit of \$341 and the corrected amount of \$222. (exhibit C)

9. For October 2007, the Agency recalculated the Food Assistance Program eligibility using the verified gross income of \$1,559. The overpayment was considered Agency error. The Agency deducted a \$311 earned income deduction and \$134 standard deduction from the gross income, for an adjusted income of \$1,114. The household qualified for a shelter deduction of \$353 because 50% of the adjusted income was less than the total shelter costs of \$910. The Agency then subtracted 30 % of the net adjusted income (\$761) from the maximum Food Assistance Program amount of \$426. The difference of \$197 was the household's corrected Food Assistance Program amount. The overpayment amount was \$166, the difference between the

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Appellant's actual Food Assistance Program benefit of \$363 and the corrected amount of \$197. (exhibit C)

10. For November 2007, the Agency recalculated the Food Assistance Program eligibility using the verified gross income of \$1,305. The overpayment was considered Agency error. The Agency deducted a \$261 earned income deduction and \$134 standard deduction from the gross income, for an adjusted income of \$910. The Agency deducted a shelter deduction of \$431 from Appellant's adjusted income for a net income of \$479. The Agency used that net income to determine a corrected Food Assistance Program benefit of \$282. (exhibit C)

11. For December 2007, the Agency recalculated the Food Assistance Program eligibility using the verified gross income of \$1,161. The overpayment was considered Agency error. The Agency deducted a \$232 earned income deduction and \$134 standard deduction from the gross income, for an adjusted income of \$795. The Agency deducted a shelter deduction of \$431 from the Appellant's adjusted income for a net income of \$364. The Agency used that net income to determine a corrected Food Assistance Program benefit of \$316. (exhibit C)

12. For March 2008, the Agency recalculated the Food Assistance Program eligibility using the verified gross income of \$1,811. The overpayment was considered Agency error. The Agency deducted a \$362 earned income deduction and \$134 standard deduction from the gross income, for an adjusted income of \$1,315. The household qualified for a shelter deduction of \$253 because 50% of the adjusted income was less than the total shelter costs of \$910. The Agency then subtracted 30 % of the net adjusted income (\$1,062) from the maximum Food Assistance Program amount of \$426. The difference of \$107 was the household's corrected Food Assistance Program amount. The overpayment amount was \$214, the difference between the Appellant's actual Food Assistance Program benefit of \$321 and the corrected amount of \$107. (exhibit C)

13. For July 2008, the Agency recalculated the Food Assistance Program eligibility using the verified gross income of \$1,859. The overpayment was considered Agency error. The Agency deducted a \$371 earned income deduction and \$134 standard deduction from the gross income, for an adjusted income of \$1,354. The household qualified for a shelter deduction of \$233 because 50% of the adjusted income was less than the total shelter costs of \$910. The Agency then subtracted 30 % of the net adjusted income (\$1,121) from the maximum Food Assistance Program amount of \$426. The difference of \$89 was the household's corrected Food Assistance Program amount. The overpayment amount was \$181, the difference between the Appellant's actual Food Assistance Program benefit of \$270 and the corrected amount of \$89. (exhibit C)

14. On 9-25-08, the Agency mailed the Food Assistance Program overpayment notice (exhibit O).

CONCLUSIONS OF POLICY:

Policy

1. A Food Assistance Program overpayment occurs when a family is paid more in Food Assistance Program benefits than they are actually entitled to receive. The Agency is required to

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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) (2007) [7CFR 273.18].

Every Food Assistance Program overpayment fits into one of three categories – administrative (agency) error, inadvertent household error and intentional program violation. 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. The Agency should calculate the amount of overpayment claims based on the date of the overpayment, the date of discovery and the Food Assistance Program rules in effect at the time of the overpayment, Ohio Admin. Code § 5101:4-8-17 (2004) [7 CFR 273.18].

If the mistake was Agency error, the first month of the overpayment is the first month that the Agency should have made the change effective, §(D).

4. The amount of the shelter deduction, used when determining Food Assistance Program eligibility, is determined by deducting 50% of the net income (after other deductions) from the total shelter costs, Ohio Admin. Code § 5101:4-4-23 (A) (2007) [7 CFR 273.9].

5. 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 Assistance Program benefits (formerly called Food Stamps) is based on need. To determine the monthly amount of Food Assistance Program, the Agency looks at income, household size, and shelter costs. If a household receives Food Assistance Program payments 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. To establish the overpayment, the Agency must redetermine Food Assistance Program eligibility using verified income. Then the Agency subtracts the amount of Food Assistance Program benefits that the Appellant should have received from the amount of Food Assistance Program benefits that they did receive. The difference is the overpayment amount.

Here, the Agency used the established shelter costs, income amount, and household size to determine the actual and corrected Food Assistance Program and correctly determined eligibility for 11 of the 13 overpayment months. But the overpayments amounts for November 2007 and December 2007 must be adjusted because the Agency did not use the correct shelter deduction to determine the net income and corrected Food Assistance Program benefit amount.

The amount of the shelter deduction, used when determining Food Assistance Program eligibility, is determined by deducting 50% of the net adjusted income (after other deductions)

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from the total shelter costs. For November 2007, the Agency used a shelter deduction of \$431. But the Appellant's adjusted income was \$910 and her total shelter costs were also \$910. So the shelter deduction would be \$455 (\$910, total shelter costs - \$455, 50% of adjusted income = \$455 shelter deduction). The Agency would deduct the shelter costs for a final net income of \$455 (the Agency used \$479). The Agency would deduct 30% of the net income (\$136) from the maximum Food Assistance Program of \$426 for a corrected November 2007 payment of \$290. The overpayment amount is \$73, the difference between the actual amount of \$363 and the corrected amount of \$290. The Agency determined an overpayment amount of \$81 (exhibit C).

For December 2007, the Agency also used a shelter deduction of \$431. But the Appellant's adjusted income was \$795 and her total shelter costs were also \$910. So the shelter deduction would be \$513 (\$910, total shelter costs - \$397 50% of adjusted income = \$513 shelter deduction). The Agency would deduct the shelter costs for a final net income of \$282 (the Agency used \$364). The Agency would deduct 30% of the net income (\$84) from the maximum Food Assistance Program of \$426 for a corrected November 2007 payment of \$342. The overpayment amount is \$21, the difference between the actual amount of \$363 and the corrected amount of \$342. The Agency had determined an overpayment amount of \$47.

The Agency should establish the claim for overpayment within one month of the date of discovery, as cited above. The date of discovery is defined as the date on which all needed verification related to the claim is received. The Agency cited a date of discovery of 9-8-08 (exhibit B). The Agency established the claim for overpayment with the notice sent on 9-25-08, so the Agency established the claim for overpayment within 30 days of the date of discovery.

The evidence affirmed that the Agency overpaid the Appellant Food Assistance Program benefits due to an Agency error. But the Agency should correct the November 2007 and December 2007 overpayment amounts. The total amount of the corrected overpayment would be \$2,718.

HEARING OFFICER RECOMMENDATIONS:

Issue #1 – 1441258 (OP):

Appeal number 1441258 should be OVERRULED. The Agency established that they overpaid the Appellant Food Assistance Program assistance. But compliance is required due to the errors in November and December overpayment amounts. Compliance shall be met upon showing that the Agency corrected the November 2007 overpayment amount to \$73 and changed the amount of the December 2007 overpayment to \$21, for a total overpayment of \$2,718.

FINAL ADMINISTRATIVE DECISION AND ORDER:

Issue #1 – 1441258 (OP):

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

COMPLIANCE REQUIRED

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Ohio Admin. Code § 5101:6-7-03 (2003) requires compliance with this decision within 10 calendar days from the date it is issued, but in no event later than 60 calendar days from the date of the hearing request.

Hearing Authority

February 13, 2009

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.

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Appendix

Exhibits:

Appellant:

1 – State hearing request

Agency:

A – Appeal summary

B – Report of claim determination/lost benefits

C – Food Assistance Program corrected budgets – 2 pp

D – Complaint section referral, dated 3-18-08

E – Work number employment verification – 3 pp

F – Pay stubs – 8 pp

G – QC review sheet

H – Running record comments – 16 pp

I – Case profile screen

J – Assistance group screen

K – Food Assistance Program issuance history – 3 pp

L – Food Assistance Program budget screens – 21 pp

M – Employment information screens – 5 pp

N – Household relationships screen

O – Notice history detail screen

P – Ohio Admin. Code § 5101:1-23-20

Q – Erroneous benefit determination

R – Report of claim determination/lost benefits – 2 pp