

## STATE HEARING DECISION

ODHS 4005 (Rev. 9/94)

County <b>LAWRENCE</b>	District Hearings Section <b>COLUMBUS</b>	Assistance Group Name		Assistance Group Number
Place of Hearing <b>LAWRENCE CDHS</b>	Initial Hearing Date <b>02/25/2002</b>	Rescheduled Postponed to	Rescheduled Postponed to	Rescheduled Postponed to

Appellant/Representative	Appellant Representation
	Local Agency Representation <b>Rebecca Harper, IM Supervisor Sandy Turbey, Employment Services Worker</b>

Date Notice Mailed <b>01/03/2002</b>	Date Received by Local Agency	Date Received by ODHS <b>02/04/2002</b>	Date Appeal Summary Received	Date Scheduling Notice Mailed <b>02/14/2002</b>
Appeal Number(s)/Program(s) <b>1055497/FSOP, 1055498/MED</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 COLUMBUS District hearing section at 1-800-686-1568.

**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) 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.

### ISSUES SECTION:

By notice mailed on 1/3/02, Lawrence County Department of Job & Family Services' (herein known as the Agency) determined that a \$1,779 food stamp overpayment occurred during the period 1/6/01 through 12/31/01. The Agency acknowledges the overpayment is a result of administrative error due to the improper exemption of a countable resource, an Individual Retirement Account (IRA). The Appellant exclaims that she should not be held liable for administrative error. The issue under appeal is whether the Agency's determination and collection of a \$1,779 food stamp overpayment is correct. (Appeal 1055497).

Based on my analysis of the evidence and testimony, the hearing officer finds that the Agency correctly determined that a \$1,779 food stamp overpayment exist. The IRA with a balance of \$13,489 placed the family over the resource limit rendering them ineligible for any assistance during the period. The Agency is correct to initiate collection action on the overpayment.

RKC

Appeal(s) <b>OVERRULED 1055497 WITHDRAWAL 1055498</b>	Date Issued <b>04/18/2002</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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**PROCEDURAL MATTERS**

- 1) On 2/4/02, the Ohio Department of Job & Family Services' (ODJFS) Bureau of State Hearings received the state hearing request. The state hearing was conducted on Monday, February 25, 2002 at 11:20am via telephone from the Columbus Regional Hearings Office. Appellant was present at the Agency. The Agency was represented by Sandy Turbey, Employment Services worker and Rebecca Harper, IM Supervisor. All parties were sworn in by ODJFS Hearing Officer Richard K. Collins.
- 2) The Agency correctly provided an appeal summary.
- 3) Appellant withdrew the Medicaid appeal 1055498, at the state hearing.
- 4) The case record was left open for the submission of documents.

**FINDINGS OF FACT:**Undisputed Facts:

1. The food stamp assistance group (AG) is composed of the Appellant, her husband, and their two minor children (4 persons).
2. The Appellant initially applied for food stamps on 2/25/00 and was denied due to excess resources from the Individual Retirement Account (IRA).
3. Appellant reapplied for assistance on 1/16/01. A new case manager reviewed the IRA and determined that it was unavailable. Therefore, the IRA was an exempt resource and the family was approved food stamps from 1/16/01 through 12/31/01.
4. On 11/29/01, the Agency received a data match which verified the husband owns an IRA with a balance of \$12,832 (Exhibit B).
5. The complaint date is 11/29/01; referral date is 11/30/01.

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6. Agency supervisor reviewed the case and obtained verification from First Federal Savings Bank that the total value of the IRA is \$13,489.33. The Bank also verified that the "funds available only after severe penalty and taxation results" (Exhibit D). The hearing officer finds that the IRA was available at the time of application and interview (1/16/01).
7. The AG received food stamps as follows: \$280 in 1/01; \$174 in 2/01; \$180 in 3/01, 4/01, 5/01 and 6/01; \$44 in 7/01; \$93 in 8/01 and 9/01; \$125 in 10/01, 11/01, and 12/01 for a total of \$1,779.
8. The food stamp overpayment claim was properly established as administrative error because the Appellant properly reported the resource but the Agency case manager incorrectly exempted the countable resource.

## CONCLUSIONS OF POLICY:

### FOOD STAMP RESOURCE REGULATIONS:

- 1) **Ohio Administrative Code (OAC) Rule 5101:4-4-01 Food stamps: Resource Eligibility Standards.** In relevant parts:

(A) Definition of resources

In determining the resources of an AG, the following shall be included and documented by the county agency in sufficient detail to permit verification.

(1) Liquid resources, such as cash on hand, money in checking or savings accounts, savings certificates, stocks or bonds, lump-sum payments as specified in OAC Rule 5101:4-4-07, funds held in individual retirement accounts (IRAs) and funds held in Keogh plans.

(C) Limits for resource value

The maximum allowable resources, including both liquid and nonliquid assets, of all members of the AG shall not exceed \$2,000 for the AG, except that, for AGs including a member or members age sixty or over, such resources shall not exceed \$3,000. Categorically eligible AGs are not subject to these resource limits.

(D) Application of resource limits

Available resources at the time the AG is interviewed shall be used to determine the AG's eligibility.

(F) Nonexempt resources

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The resources outlined in paragraph (a) of this rule shall be counted in determining an AG's eligibility, unless otherwise excluded. The nonexempt resources of an AG shall be documented by the county agency in sufficient detail to permit a reviewer to determine the reasonableness and accuracy of the eligibility or ineligibility determinations.

### **Food Stamp Overpayment Regulations:**

2. **OAC Rule 5101:4-8-15: Food Stamps: Claims Against AGs.** In relevant parts:
  - (A) A recipient claim is an amount owed because of benefits that are overpaid or benefits that are trafficked. Trafficking is defined in OAC Rule 5101:4-8-17(J). 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. This rule describes the three types of claims and the procedures the county agency must follow when handling these claims.
    - (B) The following individuals are responsible for paying a claim:
      - (1) Each person who was an adult member of the AG when the overpayment or trafficking occurred;
      - (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, or, in the case of categorical eligibility, an action by a county agency of the state or local government which resulted in the AG's improper eligibility for public assistance provided a claim can be calculated based on a change in net income and/or AG size.
3. **OAC Rule 5101:4-8-17, Food Stamps: Calculating the Claim Amount.** In relevant parts:

The county agency shall calculate claims, make collections, and disqualify AG members based on the date of overpayment, date of discovery, and the food stamp regulations in effect at the time of the overpayment.

  - (A) Calculating the claim amount: claims not related to trafficking. Specific steps in calculating the claim amount and the method of calculating claims related to trafficking.
    - (1) As a county agency, you must calculate a claim back to at least twelve months prior to when you became aware of the overpayment. For an IPV claim, the claim must be calculated back to the month the act of IPV first occurred. For all claims, don't include any amounts that occurred more than six years before you became aware of the overpayment...

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(D) Calculating the Claim Amount: Agency Error Claims. If the AG 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 AG requesting a fair hearing.

4. **OAC Rule 5101:4-8-19 Food Stamps: Initiating Collection Action and Managing Claims.** In relevant parts:

(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.

(B) Notification of Claim. County agencies must mail or otherwise deliver to the AG written notification to begin collection action on any claim in accordance with chapter 5101:6-2 of the administrative code. The claim will be considered established for tracking purposes as of the date of the initial demand letter or written notification.

**ANALYSIS:**

I find that the Agency properly reviewed the case and determined that the IRA was an available resource at the time of the second application (1/16/01). OAC Rule 5101:4-4-01(A) explains that an IRA as a countable resource, if available to the assistance group (AG). The maximum allowable resources for non-categorical AGs is \$2,000.

In review of the hearing record, I find that the Agency incorrectly exempted the resource at the time of application. After reviewing information from the Bank, the IRA valued at \$13,489, was available at the time of application and exceeds the \$2,000 resource limit.

Therefore, the Agency correctly found that the AG was not eligible for any food stamp assistance during the application period, 1/16/01 through 12/31/01. The AG received a total of \$1,779 during the application period and this entire amount is considered an overpayment.

OAC 5101:4-8-15 explains that the Agency shall establish and collect a claim against any AG that has received more food stamp benefits than it is entitled to receive regardless of the reason for the overpayment (whether administrative error or inadvertent household error). In this case, the Agency correctly determined that the overpayment claim was caused by administrative error.

Moreover, since the AG received \$1,779 in food stamps that it was not entitled to receive during the period 1/16/01 through 12/31/01, the hearing officer finds that the Agency's determination and collection of a

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\$1,779 food stamp overpayment is correct.

**HEARING OFFICER'S RECOMMENDATIONS:**

Based upon the record before me, I find the appeal 1055497 should be Overruled. The Agency's determination and collection of the overpayments is correct.

**FINAL ADMINISTRATIVE DECISION AND ORDER:**

Finding the hearing officer's decision to be supported by the evidence, the recommendations shown above are adopted, and Food Stamp appeal 1055497 is Overruled. Medicaid appeal 1055498 is Withdrawn.

**APPENDIX:**

**AGENCY EXHIBITS:**

- A) Appeal Summary
- B) Data Exchange Inquiry
- C) Benefit Recovery Referral
- D) First Federal Savings Bank
- E) ODHS 7095, Overpayment Determination Form
- F) ODJFS 07424, Report of Claim Determination/Loss Benefits
- G) Food Stamp Issuance History
- H) Food Stamp Net Income Budgets
- I) Benefit Recovery Referral

**APPELLANT EXHIBITS:**

None

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Date Issued: 04/18/2002