

STATE HEARING DECISION

ODHS 4005 (Rev. 9/94)

County LUCAS	District Hearings Section TOLEDO	Assistance Group Name		Assistance Group Number
Place of Hearing LUCAS CDJFS	Initial Hearing Date 03/30/2005	Rescheduled Postponed to 04/19/2005	Rescheduled Postponed to	Rescheduled Postponed to

Appellant/Representative	Appellant Representation
	Local Agency Representation Edward Gralak - Investigator Sharon Echols - Collection Eligibility Specialist

Date Notice Mailed 01/07/2005	Date Received by Local Agency	Date Received by ODHS 01/13/2005	Date Appeal Summary Received	Date Scheduling Notice Mailed 04/07/2005
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Appeal Number(s)/Program(s) 1211649/OWFOP, 1222362/FSOP

Notice to Appellant

This is the state hearing decision in your case. All papers and materials introduced at the hearing or otherwise filed make up the hearing record. The hearing record will be maintained by the Ohio Department of Job and Family Services.

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, Ohio 43218-2825 or FAX (614) 728-9574. Your request should state why you think the hearing decision is wrong. You can complete the appeal request form included with this decision. Your written request or appeal form 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 or your representative may request a free copy of the hearing record and recording of the hearing by calling the Bureau of State Hearings at 1-866-635-3748 (select option 1 from main menu).

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(1211649)(OWFOP)

ISSUE #2(1222362)(FSOP)

The Appellant received Ohio Works First (OWF) cash assistance and food stamp benefits through the Lucas County Department of Job and Family Services (Agency). The Agency determined that the Appellant was ineligible for some of the benefits received due to the Appellant not initially reporting her income timely, and her tips not being included as countable earned income. As a result, the Agency determined that Appellant to have a \$519 OWF overpayment from 08-01-02 through 03-31-03, and a food stamp overpayment of \$142 from 09-01-02 through 03-31-03. Notices were sent to the Appellant on 01-07-05 informing her of these overpayments, and requesting repayment. The appeal for Issue #1 is whether the Agency's determination that the Appellant is required to repay the \$519 OWF overpayment is correct. The appeal for Issue #2 is whether the Agency's determination that the Appellant is required to repay the \$142 food stamp overpayment

MEM

Appeal(s) OVERRULED 1211649, 1222362	Date Issued 04/29/2005	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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is correct.

The Agency's determination is correct for both issues because the Agency is required to initiate collection action in both the OWF and food stamp programs and collect the overpayments. It makes no difference whether the overpayments were due to Agency error or household error, the overpayments are to be recovered. The appeals of both issues are overruled.

PROCEDURAL MATTERS

The Appellant's hearing request was received on 01-13-05. The hearing was initially scheduled for 03-30-05, then was rescheduled for 04-19-05 per scheduling notice sent to the Appellant on 04-07-05. There was no appeal summary received for these issues.

FINDINGS OF FACT

1. The Appellant obtained employment on 07-15-02. The employment was reported on 08-20-02.
2. The Agency determined an OWF overpayment for August 2002 due to the Appellant's failure to timely report the employment.
3. The Agency determined the Appellant to have an OWF and food stamp overpayment for September 2002 through March 2003 due to the Agency error of not considering tip income when computing eligibility.
4. The Appellant received \$373 OWF in each month from August 2002 through September 2002. She received \$332 OWF in each month from October 2002 through December 2002. She received \$373 OWF in each month from January 2003 through March 2003.
5. The Agency determined that the Appellant was eligible for \$54 OWF for August 2002, \$293 for September 2002, \$267 for October 2002, \$236 for November 2002, and \$373 for each month from December 2002 through March 2003.
6. There was a \$519 difference between the OWF received from August 2002 through March 2003, and the amount that the Agency determined the Appellant was eligible to receive after considering the earned income and tip income.
7. The Appellant received \$356 food stamp benefits in September 2002, \$336 food stamp benefits in each month of October 2002 through November 2002, and \$366 food stamp benefits in each month from

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December 2002 through March 2003.

8. The Agency determined that the Appellant was eligible to receive \$291 food stamp benefits for September 2002, \$305 for October 2002, \$290 for November 2002, and \$366 for each month from December 2002 through March 2003.

9. There was a \$142 difference between the food stamp benefits received from September 2002 through March 2003, and the amount that the Agency determined the Appellant was eligible to receive after considering the tip income.

10. The Agency notified the Appellant of the \$519 OWF overpayment and \$142 food stamp overpayment per notices sent to the Appellant on 01-07-05. The Agency is requesting repayment of these overpayments.

11. The Appellant is appealing the Agency's request of repayment of the overpayments because they were due to Agency error.

12. The Appellant has not made any payments toward the OWF overpayment or food stamp overpayment.

CONCLUSIONS OF POLICY

Policy - OWF

All erroneous payments that occurred after 07-01-98 are to be recovered in accordance with this rule per Ohio Administrative Code § 5101:-23-70(A). "All ADC/TANF cash assistance and/or OWF erroneous payments that occurred on or after July 1, 1998, . . shall be recovered in accordance with the provisions set forth in this rule.'

A payment of OWF assistance that the assistance is not eligible to receive is defined as an erroneous payment per Ohio Administrative Code § 5101:-23-70(E). "An 'erroneous payment' is defined in section 5107.76 of the Revised Code as a payment of cash assistance under Ohio works first (OWF) to assistance groups not eligible to receive the assistance.'

The Agency is required to take action to collect erroneous payments per Ohio Administrative Code § 5101:-23-70(F). "The prevention of erroneous payments in OWF is an important CDJFS objective. To achieve this objective, the CDJFS must: . . . (3) Take action to recover the erroneous payments in accordance with the provisions set forth in this rule and sections 5107.05 and 5107.76 of the Revised Code."

The amount of the erroneous payment is the difference between what the assistance group actually received

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and what the assistance group was eligible to receive per Ohio Administrative Code § 5101:-23-70(J). "The amount of the erroneous payment is the difference between the amount of benefits the assistance group should have received for a calendar month, and the amount of benefits the assistance group actually received for that month."

Policy - Food Stamps

The Agency is required to determine an overpayment and collect it if the assistance group received more food stamps than it was eligible to receive per Ohio Administrative Code § 5101:4-8-15(A) (2002) and 7 C.F.R. § 273.18. "(A) recipient claim is an amount owed because of benefits that are overpaid . . . 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."

To determine the overpayment amount, the Agency is to subtract the amount of food stamps that the household is eligible to receive from the amount that the household actually received per Ohio Administrative Code § 5101:4-8-17(A) (2001) and 7 C.F.R. § 273.18. "Determine the correct amount of benefits for each month that an AG received an overpayment. . . . Subtract the correct amount of benefits from the benefits actually received. The answer is the amount of the overpayment."

The Agency must start collection action on all overpayment claims per Ohio Administrative Code 5101:4-8-19(A). "County agencies must begin collection action on all claims unless the conditions under paragraph (K)(3) of this rule apply."

Collection action other than allotment reduction is permitted for administrative error claims if the individual is not a member of a household undergoing allotment reduction per Ohio Administrative Code 5101:4-8-19(K). "If there is an allotment reduction in effect to collect an administrative error claim, then other collection actions are not taken

The following is the allotment reduction policy: You may: . . . (F) Continue to use any other collection method against any individual who is not a current member of the AG that is undergoing allotment reduction.'

Analysis

In the Appellant's case, the evidence and testimony presented at the state hearing support a finding that the appellant was an OWF recipient from at least June 2002 through May of 2003, and a food stamp recipient from at least August 2002 through May 2003. She obtained employment on July 15, 2002, which was reported on 08-20-03. When the Agency initially determined the OWF and food stamp eligibility based on her earned income, the Agency failed to consider the amount received for tips. Thus the Agency determined that the Appellant was overpaid OWF and food stamp benefits due to that error. The Agency notified the Appellant of a \$519 OWF overpayment for August 2002 through March 2003 and \$142 food stamp

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overpayment from September 2002 through March of 2003, and is requesting repayment. The Appellant stated at the hearing that while she does not disagree she was overpaid, and she was not appealing the amount of the overpayment, she asserted that should not have to repay it because it was an Agency error.

Both the OWF and food stamp programs define overpayments as an amount of benefit received by an assistance group that it was not eligible to receive. Both programs require the Agency to calculate overpayment claims and to initiate collection action on the claims. Although the procedures that the Agency may take to collect overpayments caused by Agency error may differ from the procedures utilized for collection of a household error or intentional program violation error, the Agency is still required to collect the overpayment. The initial step in a collection action is notifying the household of the requirement to repay the overpayment. Since there is an OWF overpayment and food stamp overpayment that the Appellant has not repaid nor in the process of making payments toward the overpayments, I find the Agency is correct to request repayment of the OWF and food stamp overpayments.

HEARING OFFICER'S RECOMMENDATIONS

ISSUE #1(1211649)(OWFOP)

ISSUE #2(1222362)(FSOP)

Because the Agency is required to initiate collection action on all overpayments regardless as to whether they were a household error or Agency error, and because the Appellant has an OWF and a food stamp overpayment, I recommend the Agency's actions of requesting repayment of both the OWF overpayment and food stamp overpayment be affirmed and both appeals be overruled.

FINAL ADMINISTRATIVE DECISION AND ORDER

Finding the hearing officer's decision to be supported by the evidence, the recommendations above are adopted.

The appeal of Issue #1(1211649)(OWFOP) is overruled.

The appeal of Issue #2(1222362)(FSOP) is overruled.

LIST OF EXHIBITS

AGENCY

- A. Verification of employment income from 07-15-02 through March 2003 (A1 - A4)
- B. OWF overpayment budget sheets (B1 - B2)

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- C. Food stamp overpayment budget sheets (C1 - C3)
- D. Food stamp report of claim determination (D1 - D2)
- E. Food stamp overpayment notice sent to Appellant on 01-07-05 (E1 - E2)
- F. OWF overpayment notice, sent to Appellant on 01-07-05 (F1 - F2)
- G. OWF cash issuance history computer printout (G1 - G2)
- H. Food stamp issuance history computer printout (H1 - H2)
- I. Notice History computer printout showing food stamp and OWF overpayment notices sent to the appellant on 10-29-04

APPELLANT

- 1. Hearing request received on 01-13-05

Date Issued: 04/29/2005