

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

In the matter of:

<u>Case Number:</u>	<u>County:</u>	
5047184543	LUCAS	
<u>Appeal:</u>	<u>Program:</u>	<u>Disposition:</u>
1433705	OWFOP	OVERRULED
1448532	OWF	OVERRULED
No Compliance Required		
Decision Date:	04/14/2009	
Request Date:	08/28/2008	
Hearing Officer:	MICHAEL MAURER	

State Hearing Decision

**ISSUE #1(1433705)(OWFOP)**

**ISSUE #2(1448532)(OWF)**

The Appellant received Ohio Works First (OWF) cash assistance through the Lucas County Department of Job and Family Services (Agency). The Agency determined that she has a \$2460 OWF overpayment due to Intentional Program Violation (IPV), and that this causes her to be ineligible for OWF until it is repaid in full. As a result her OWF was terminated. The appeal for Issue #1 is whether the Agency's determination that the Appellant has a \$2460 OWF overpayment due to IPV is correct. The appeal for Issue #2 is whether the Agency's 08-31-08 termination of the OWF, due to a determination that of receipt of fraudulent assistance that has not been repaid, is correct.

The Agency's determination of the \$2460 overpayment is correct because the Appellant received six OWF checks of \$410 each to replace six OWF checks that were reportedly lost or stolen, of which all were ultimately determined by Bureau of Criminal Investigation (BCI) to have been cashed by the Appellant. The appeal of Issue #1 is overruled.

The Agency's 08-31-08 termination of OWF is found to be correct because the Appellant has an overpayment due to receipt of fraudulent assistance as shown by the IPV hearing decision. The Appellant has not made any payment on this overpayment. An assistance group is ineligible to participate in OWF until the fraudulent assistance is repaid in full. The appeal of this issue is overruled.

**PROCEDURAL MATTERS**

The Appellant's hearing request was received on 08-28-08. The hearing was initially scheduled for 10-09-08, rescheduled to 11-12-08, again rescheduled to 12-16-08, and rescheduled to 04-08-09 at which time it was heard. There was no appeal summary received for this issue.

The Agency was represented by Michelle Mata, Investigative Team Leader. The Appellant attended the hearing along with her mother. All parties were sworn in.

**FINDINGS OF FACT**

1. The Agency determined that the Appellant received duplicate OWF assistance in each month of April 2005 through July 2005, January 2006 and September 2006 in the amount of \$410 each month. The total duplicate assistance was \$2460.
2. The Agency set up an appointment to discuss the duplicate assistance on 01-18-09. The Appellant did not keep that appointment.
3. The Agency notified the Appellant of the OWF overpayment for each month per notices sent on 01-24-09. The Agency also sent notices of Waiver of Administrative Disqualification Hearing for each of the six months of duplicate assistance.
4. The Appellant contacted the Agency regarding the overpayment notices and an appointment was set for 02-01-09 and rescheduled for 02-04-09. The Appellant did not keep either appointment.
5. The Appellant was notified of a disqualification hearing per notice sent by regular mail and certified mail on 06-27-08. Return receipt of the certified mail was claimed. The Administrative Disqualification Hearing was held on 07-29-08 and the Appellant did not attend this hearing.
6. The Appellant was determined to have an IPV for each month of April 2005, May 2005, June 2005, July 2005, January 2006 and September 2006 due to receipt of \$410 duplicate assistance in each of those months. The Administrative Disqualification Hearing decision was issued on 07-31-08 and determined that the Appellant received \$410 duplicate assistance in each month per the report from the Bureau of Criminal Investigation and that she committed an IPV.
7. The Administrative Disqualification hearing decision required the Agency to disqualify the Appellant from the OWF program until the IPV overpayment is repaid in full.
8. The Agency terminated the Appellant's OWF effective 08-31-08 due to a determination that she has not repaid the fraudulent assistance that was received.
9. The Appellant has not made any payments toward the overpayment.

**CONCLUSIONS OF POLICY**

**Policy**

The amount of erroneous payment is the difference between the amount of benefits the assistance group should have received and the amount of benefit that the assistance group actually received per Ohio Administrative Code § 5101:1-23-70(J).

If it is determined that the individual received fraudulent assistance, the assistance group is ineligible for OWF until it is repaid in full. The ineligibility begins the first day of the second month following the issuance of the notice of disqualification for Intentional Program Violation per Ohio Administrative Code § 5101:1-23-75(B).

**Analysis**

In the Appellant's case, the evidence and testimony presented at the state hearing show that the Appellant received OWF in the amount of \$410 per month. While in receipt of OWF, she reported lost or stolen checks in 6 separate months of April 2005 through July 2005, January 2006, and September 2006. The Agency issued replacement checks each of those months. The Agency later determined that Appellant actually received the original checks as well as the replacement checks in all of those months per report from BCI. The Agency charged the Appellant a \$2460 OWF overpayment and pursued an IPV determination. The Agency also notified the Appellant of the overpayment on 01-24-08 and set up an appointment for 02-01-08 to discuss it. The Appellant contacted the Agency to reschedule the appointment to 02-04-08, but missed that appointment as well. The Agency referred this matter for an IPV determination, and an Administrative Disqualification hearing was held on 07-29-08. The Appellant was determined to have committed fraud to receive the \$410 duplicate assistance in each of the six months. The Agency was directed to disqualify the Appellant until the fraudulent assistance is repaid. The Appellant's OWF was terminated effective 08-31-08.

The Appellant and her mother are appealing both the overpayment and the OWF termination because the assistance is needed. The Appellant is often sick and in the hospital. The Appellant's mother does not have any idea how the Appellant could be expected to pay anything back. She indicated that she has been helping to take care of the Appellant but she is going through foreclosure herself. The Appellant and her children will be forced to move into a shelter. The Appellant stated that she did not receive the notices of overpayment sent in January 2008 because she was forced to move from her address in December 2007 due to a fire. She acknowledged that she contacted the Agency and made appointments in February 2008 because she wanted to find out what was going on. She stated that she did not receive any notice for disqualification hearing and she did not receive the disqualification hearing decision. She acknowledged that the address was correct at the time the notice was sent for the disqualification hearing. She later stated that she did receive some type of notification that was sent certified. The Appellant and her mother noted that this problem with the checks transpired about three to four years ago and they thought it was taken care of at that time. It seemed highly coincidental to them that the Agency is now seeking repayment during a deep economic recession. The Appellant stated that the cash did not go to her, it went to someone else and she did not receive the money for a number of months.

The Appellant had 90 days to request a hearing on the overpayment from the date that the notice was sent, however, the 90 day time limit would not apply if the notices were not received. The Agency testimony indicated that 6 notices were sent – one for each month of overpayment – and none were returned by the post office. Although the Appellant's testimony is inconsistent regarding lack of receipt of almost everything sent to her, even the certified mail for which she signed return receipt, I cannot find as fact that the Appellant received each of the 6 overpayment notices sent to her. She provided evidence of a serious fire at her residence in the prior month which forced her to move. Thus, the overpayments remain subject to appeal. However, the overpayment determination has essentially been made with the IPV decision when reviewing the cause of the overpayment. The IPV is due to receipt of duplicate assistance. The IPV decision shows that it was found that BCI determined the Appellant cashed the six original OWF checks as well as the six replacement checks. Each one was in the amount of \$410. Thus, it is found

STATE HEARING DECISION CONTINUATION

that she received six \$410 OWF checks which was a duplication of assistance that she was not eligible to receive. This totals \$2460 (\$410 x 6 = \$2460). The Agency is not seeking repayment of all 12 checks – only the six duplicate checks. The balance of the overpayment is subject to review, and the Appellant stated that she has not made any payment on this overpayment. Therefore, I find the Agency’s overpayment determination to be correct. The IPV determination establishes that the overpayment is fraudulent assistance. The assistance group is ineligible for OWF until the fraudulent assistance is repaid in full. Therefore, I find the Agency’s 08-31-08 termination of OWF to also be correct.

**HEARING OFFICER'S RECOMMENDATION**  
**ISSUE #1(1433705)(OWFOP)**

Because it was determined that the Appellant received six duplicate OWF checks in the amount of \$410 each to replace OWF checks that were determined to have already been received by the Appellant, and the total of the duplicate assistance received is \$2460, I recommend the appeal of this issue be found in the Agency’s favor and overruled.

**ISSUE #2(1448532)(OWF)**

Because the Appellant has an overpayment balance due to receipt of fraudulent assistance, and an assistance group is ineligible to participate in OWF until the fraudulent assistance is repaid in full, I recommend the appeal of this issue be found in the Agency’s favor and overruled.

**FINAL ADMINISTRATIVE DECISION AND ORDER**

Since I find the Hearing Officer's recommendations to be supported by policy and the evidence, I hereby adopt the recommendations and the appeals are overruled.

Hearing Authority

April 14, 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 TOLEDO 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.

## STATE HEARING DECISION CONTINUATION

### 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**

**Agency Exhibits**

- A. Notices of OWF overpayments for each month April 2005, May 2005, June 2005, July 2005, January 2006, and September 2006 (A1 – A7) – (includes one copy of page 2)
- B. Notices of Waiver of Administrative Disqualification hearing for each month April 2005, May 2005, June 2005, July 2005, January 2006, and September 2006 (B1 – B7) – (includes one copy of page 2)
- C. Notice of Disqualification for Intentional Program Violation (C1 – C2)
- D. Administrative Disqualification Hearing Decision, issued 07-31-08
- E. Appointment letter dated 01-10-08
- F. Notice history detail for OWF termination notice, sent 08-08-08 (F1 – F2)

**Appellant Exhibits**

- 1. Hearing request received on 08-28-08
- 2. Documentation of fire at Appellant’s residence on 12-22-07, and Agency receipt for documentation dated 09-15-08 (2 pages)

**Cited Regulations**

Ohio Administrative Code § 5101:1-23-70(J) – “Calculation of erroneous payment

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.”

Ohio Administrative Code § 5101:1-23-75(B) – “If a CDJFS director determines that an assistance group has received fraudulent assistance in accordance with the provisions set forth in paragraph (A) of this rule, the assistance group is ineligible to participate in the OWF program or the PRC program until a member of the assistance group repays the cost of the fraudulent assistance. Ineligibility as a result of an IPV begins not later than the first day of the second month following the issuance of the notice of disqualification for intentional program violation (i.e., the issuance of the JF 40062, ‘Notice of Disqualification for Intentional Program Violation’).”