

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

In the matter of:

<u>Case Number:</u>	<u>County:</u>	
5076367191	PIKE	
<u>Appeal:</u>	<u>Program:</u>	<u>Disposition:</u>
1451644	OWFOP	SUSTAINED
Compliance Required		
Decision Date:	04/07/2009	
Request Date:	11/25/2008	
Hearing Officer:	BRENDA DRAKEFORD	

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State Hearing Decision

**ISSUE SECTION**

**Appeal 1451644 – OWF Overpayment**

On 11/18/08 Pike County Department of Job and Family Services (Agency) issued a second notice to the Appellant that an overpayment in the amount of \$600 had occurred during the period of 1/08 – 4/08 due to receipt of a work program transportation/participation allowance on her previous case #5071601545. This second notice was issued on her current case number of 5076367191. The Appellant, in disagreement with the \$600 overpayment determination requested a state hearing; the issue under appeal is whether the Agency correctly determined the overpayment and whether the Appellant is responsible for repayment.

After careful consideration of the evidence and testimony presented during the hearing I find that the Agency is in agreement with the Appellant that the \$600 amount is incorrect and has been adjusted to \$575. Based on this testimony I find that the \$600 overpayment determination is not correct and uncollectible. I recommend that appeal 1451644 should be sustained with compliance.

**PROCEDURAL MATTERS**

The Appellant's request for a state hearing was received on 11/25/08 in the Bureau of State Hearings; the hearing was scheduled for 2/9/09; however, at the request of the Appellant it was rescheduled. The hearing was rescheduled for and held on 3/20/09 via the telephone from the Agency's offices. The Agency Representatives, Lauri Lambert, Eunice Distel, Laura Parker and Joan Anderson, and the Appellant presented testimony after being sworn in by the Hearing Officer; no appeal summary was submitted by the Agency. At the request of the Appellant the hearing record was left open until the close of business on 3/27/09 so that the Appellant could submit documents to support that she attended her work assignment during the period of time in question. No documents were received from the Appellant by 3/27/09 and the hearing record was closed.

**FINDINGS OF FACT**

## STATE HEARING DECISION CONTINUATION

1. It is undisputed that during the period of 1/08 through 4/08 the Appellant was issued \$150 each month as a transportation/participation allowance for an assigned work program activity based on the number of miles driven each day.
2. The Agency received attendance verification for the months of 1//08 through 4/30/08 that the Appellant completed only seven hours during the month of 4/08; no other hours were completed during this period.
3. The initial overpayment notice stated that \$600 was overpaid because the Appellant did not complete any of her required hours.
4. In preparation for the hearing the Agency revised the overpayment amount to \$475 allowing the Appellant transportation/participation benefits of \$25 for 4/07 because she attended 7 hours for the month.
5. The Appellant disputes that she did not attend her assigned work activity during the period of 1/08 through 4/30/08.
6. The hearing record was left open until the close of business on 3/27/09 so the Appellant could present documents to support her testimony.
7. No documents were received from the Appellant by the close of business on 3/27/09; record closed.
8. Exhibits A – G (13 pages) were submitted by the Agency.
9. Exhibit 1 (1 page) is the Appellant's state hearing request.

### **CONCLUSIONS OF POLICY**

#### **Policy**

An erroneous Ohio Works First payment, or overpayment, is payment of cash assistance to households not eligible to receive the assistance. The overpayment amount is the difference between the amount of benefits the assistance group should have received for the month and the amount of benefits they actually received. The Agency must take action to recover the erroneous payments. Ohio Admin. Code § 5101:1-23-70

The agency proposing an action is responsible for preparing an Appeal Summary (JFS 4067) with appropriate attachments and sending it to the assigned hearings section 3 days prior to the scheduled hearing date. The Appeal Summary with its attachments shall provide a summary of facts to document the issue under appeal and shall be sufficient to demonstrate that the basis for the proposed action or determination is correct. Ohio Admin. Code § 5101:6-5-01

The hearing officer's findings of fact shall be based exclusively on the evidence introduced at the hearing, or after the hearing and subject to examination and rebuttal by both parties. It shall be the responsibility of the agency to show by a preponderance of evidence that its action or inaction was in accordance with rules of the Ohio Department of Job and Family Services. Ohio Admin. Code § 5101:6-7-01

#### **Analysis**

The Appellant in this case requested a state hearing after receiving a second notice that an overpayment in the amount of \$600 occurred due to receipt of a work program transportation/participation allowance for 1/08 through 4/08. The Agency Representative testified that the Appellant was found required for participation in a JOBS activity and based on her assigned hours of work and her travel distance she was issued a transportation allowance of \$150 each month. The Agency Representative testified that it was established that the Appellant had good cause for her failed hours; however, she did not return the transportation/participation

**STATE HEARING DECISION CONTINUATION**

allowance. She further testified that the initial \$600 determination has been revised to reflect \$575 because of a finding that she did attend enough hours (7) during 4/08 to receive transportation/participation allowance of \$25 for 4/08. The Appellant testified that she received paperwork for a sanction but that she went to her worksite and requested that the hearing record be left open so she can provide documents to support her case. No other testimony was presented. I find that although the Agency presented documents and testimony to support that the overpayment amount has been revised to \$575 they have not issued notice to the Appellant regarding the revised overpayment amount. I find that the \$600 overpayment amount is incorrect.

**HEARING OFFICER'S RECOMMENDATIONS**

Based on the record and Agency policy before me, I recommend that appeal 1451644 should be sustained. The Agency is directed to stop any collection efforts regarding the \$600 overpayment determination. If, after review, the Agency determines that the Appellant was overpaid cash benefits, she is to be issued proper notice of the determination with all appeal rights.

**FINAL ADMINISTRATIVE DECISION AND ORDER**

Since I find that the Hearing Officer's recommendation is supported by policy and the evidence, I hereby adopt the recommendation. Thus, appeal 1451644 is sustained. Ohio Administrative Code Rule 5101:6-7-03 requires compliance with this decision within 15 calendar days from the date it is issued, but in no event later than 90 calendar days from the date of the hearing request.

Hearing Authority

April 7, 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 COLUMBUS 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**

## STATE HEARING DECISION CONTINUATION

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**

**APPENDIX**

**Agency Exhibits:**

- A. 7/3/08 CRIS-E Screen – CNHD – Notice History Detail – OWF Overpayment
- B. Appellant Mileage Statement
- C. Work Program Attendance Verification 1/08 – 4/08
- D. Original Overpayment Notice
- E. Revised Overpayment Notice for \$600 issued 2/9/09
- F. Running Record Comments
- G. Fax Cover Sheets

**Appellant Exhibits:**

- 1. State Hearing Request