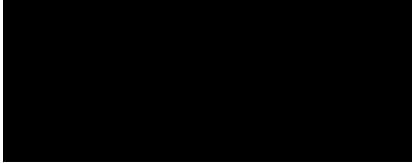


FILED

Feb 05, 2016

STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS

Office of Appeal Hearings
Dept. of Children and Families

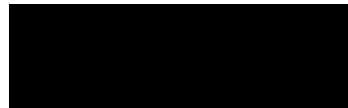


APPEAL NO. 15F-08021

PETITIONER,

Vs.

FLORIDA DEPARTMENT
OF CHILDREN AND FAMILIES
CIRCUIT: 15 Palm Beach
UNIT: 02555



RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on December 10, 2015 at 10:01a.m.

APPEARANCES

For the Petitioner:



For the Respondent

Guillermo Carton, senior human service program specialist, Benefit Recovery Unit

ISSUE

The petitioner is appealing the Department's action to establish and collect an agency error overpayment of \$200 in Food Assistance Program (FAP) benefits. The respondent carries the burden of proof by preponderance of evidence.

PRELIMINARY STATEMENT

The Department presented 12 exhibits which were accepted into evidence and marked as the Respondent's Exhibits 1-12. The petitioner did not present any exhibits

at the hearing. The record was held open until December 15, 2015, for the petitioner to provide verification of her Unemployment Compensation Benefit (UCB). The information was received, entered into evidence and marked as Petitioner's Exhibit 1. The record closed on December 15, 2015.

The respondent motioned for the appeal to be dismissed as the petitioner requested a hearing on September 22, 2014 for the same FAP claim.

FINDINGS OF FACT

1. The petitioner applied for FAP benefits on February 27, 2013. She completed the on-line application with an electronic signature and agreement to the Rights and Responsibilities. Her household consisted of herself only. No income was reported on the application or counted in the FAP budget. On March 1, 2013, the Department approved the petitioner for \$200 FAP benefits.
2. In May of 2013, the petitioner began receiving UCB. The Department received an electronic alert informing the agency that the petitioner was receiving UCB. The Department did not take timely action to update the petitioner's case record with the UCB and as a result she received FAP benefits for August 2013 for which she was not eligible.
3. By notice dated June 25, 2014, the respondent informed the petitioner a review of her case showed that between August 1, 2013 and August 31, 2013, she received \$200 more in Food Assistance benefits than she was eligible to receive. The reason given was that the agency did not take timely action on a reported change.
4. The overpayment amount was determined using the following methodology for August 2013. The Department added the petitioner's unemployment of \$500 for August

6, 2013, \$550 for August 14, 2013 and \$550 for August 28, 2013, using information from Florida Department of Economic Opportunity, resulting total gross monthly income of \$1,650. It was compared to the maximum gross income of \$1,862 for a household size of one. A standard deduction of \$149 was subtracted to get \$1,501 as the petitioner's adjusted net income. The petitioner was ineligible for an excess shelter deduction as her total standard shelter (50% of adjusted net income) was less than the total shelters/utility cost (\$338). Her adjusted net income remained \$1,501. The maximum net income for a household size of one is \$931.

FAP budget for August 2013

Unearned income (UCB)	\$1,650
Total household income	\$1,650
Standard deduction for a household of 1	(\$149)
Adjusted income after deductions	\$1,501
Shelter costs	\$0.00
Standard utility Allowance	\$338
Total rent/utility cost	\$0.00
Shelter standard (50% adjusted income)	\$750.50
Excess shelter deduction	\$0
Net Adjusted income	\$1,501
Excess Shelter Deduction	0
Adjusted income after shelter deduction	\$1,501

5. The respondent took 30% of \$1,501 to calculate the benefit reduction of \$451 (rounded up). The maximum FAP benefit amount for a household size of one was \$200. As the benefit reduction was more than the FAP maximum allotment the

Department found that the petitioner was overpaid \$200 in FAP benefits for August 2013.

6. The petitioner did not dispute the receiving UCB for August 2013. She disputed the amount of UCB the Department alleged she received. The petitioner confirmed she received \$550 extra in August 2013 for payments owed in July 2013. She also provided a printout from Florida Department of Economic Opportunity indicating payment dates of August 6, 2013 for \$550, August 14, 2013 for \$550 and August 28, 2013 for \$550.

7. The Department began recouping money towards repaying the overpayments. It has already recouped \$137. The balance owed on the claim is \$63.

CONCLUSIONS OF LAW

8. The Department of Children and Families, Office of Appeal Hearings has jurisdiction over the subject matter of this proceeding and the parties, pursuant to § 409.285, Fla. Stat. This order is the final administrative decision of the Department of Children and Families under § 409.285, Fla. Stat.

9. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code R. 65-2.056.

10. In accordance with Fla. Admin. Code R. 65-2.060 (1), the burden of proof was assigned to the respondent. The party having the burden shall establish their position by a preponderance of evidence.

JURISDICTION:

11. It is necessary to establish if a hearing was requested timely. . Fla. Admin. Code Rule 65-2.046, sets forth time limits in which to request a hearing and states in part:

(1) The appellant or authorized representative must exercise the right to appeal within 90 calendar days in all programs... The time period begins with the date following:

(a) The date on the written notification of the decision on an application.

(b) The date on the written notification of reduction or termination of program benefits.

(c) The date of the Department's written notification of denial or a request or other action which aggrieves the petitioner when that denial or action is other than an application decision or a decision to reduce or terminate program benefits.

12. The findings show the petitioner made an initial request for hearing on September 22, 2014. She was notified of the overpayments on June 25, 2014. There was a hearing scheduled on October 20, 2014 which she missed. She claimed that she did not get the notice of hearing in time to attend the hearing as she moved four times. Her mail was forwarded to her but she received her notice of hearing after the hearing date. The respondent's Motion to Dismiss the hearing was denied since the petitioner's initial request for hearing was made on September 22, 2014, within the time period set forth in the controlling authority to request a hearing from the mailing date of the Notice of Case Action.

13. Fla. Admin. Code R. 65A-1.900 Overpayment and Benefit Recovery, defines the administrative policies applicable to the establishment and recovery of overpayment in the public assistance programs.

14. The FAP standards for gross income and net income and deductions appears in the Department's Program Policy Manual (The Policy Manual), CFOP 165-22, at Appendix A-1. Effective October 2012, the maximum gross income for a one person assistance group was \$1,862. The maximum net income limit for a one-person

assistance group was \$931. The standard deduction was \$149. The standard utility was \$338.

15. When determining over issuance in the Food Assistance Program, 7 C.F.R. § 273.18 states in part:

(a) General.

(1) A recipient claim is an amount owed because of: (i) Benefits that are overpaid or...

(2) This claim is a Federal debt subject to this and other regulations governing Federal debts. The State agency must establish and collect any claim by following these regulations.

(e) Initiating collection action and managing claims—(1) Applicability. State agencies must begin collection action on all claims unless the conditions under paragraph (g)(2) of this section apply...

(a)(4) The following are responsible for paying a claim:

(i) Each person who was an adult member of the household when the overpayment or trafficking occurred...

(b) *Types of claims.*

(2) Inadvertent household error: any claim for an overpayment resulting from a misunderstanding or unintended error on the part of the household.

(3) Agency error (AE) claim: any claim for an overpayment caused by an action or failure to take action by the State agency...

16. The above authorities set forth the Department's legal obligation to initiate and collect any overpayment claims against any household who received a larger FAP benefit amount than they were eligible to receive. The above authority also states that each person who was an adult member of the household when the overpayment occurred is responsible for paying a claim.

17. Recovery of payments made due to mistake or fraud is set forth in § 414.41, Fla. Stat. It states:

(1) Whenever it becomes apparent that any person or provider has received any public assistance under this chapter to which she or he is not entitled, through either simple mistake or fraud **on the part of the department or on the part of the recipient or participant**, the

department shall take all necessary steps to recover the overpayment...
(emphasis added)

18. The above authorities provide the authority necessary for the Department to pursue and recover all overpayment claims from any liable individuals, caused either by an inadvertent household error, or by agency error. The Department's representative explained the overpayment occurred as the agency failed to take timely action to update the petitioner's UCB, and as a result she received \$200 in FAP benefits which she was not eligible to receive.

19. The undersigned reviewed the overpayments budget did not find any mathematical errors with the calculation. The \$200 FAP overpayment for the months of August 2013 is correct.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is denied. The Department's action is affirmed. The Department may seek repayment of FAP benefits for the period of August 2013 for \$200.

NOTICE OF RIGHT TO APPEAL

This decision is final and binding on the part of the Department. If the petitioner disagrees with this decision, the petitioner may seek a judicial review. To begin the judicial review, the petitioner must file one copy of a "Notice of Appeal" with the Agency Clerk, Office of Legal Services, Bldg. 2, Rm. 204, 1317 Winewood Blvd., Tallahassee, FL 32399-0700. The petitioner must also file another copy of the "Notice of Appeal" with the appropriate District Court of Appeal. The Notices must be filed within thirty (30) days of the date stamped on the first page of the final order. The petitioner must either pay the court fees required by law or seek an order of indigency to waive those fees. The petitioner is responsible for any financial obligations incurred as the Department has no funds to assist in this review.

FINAL ORDER (Cont.)
15F-08021
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DONE and ORDERED this 05 day of February, 2016,
in Tallahassee, Florida.

Christiana Gopaul-Narine

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Copies Furnished To: [REDACTED] Petitioner
Office of Economic Self Sufficiency