

[REDACTED]

APPELLANT

v.

[REDACTED]

[REDACTED]

[REDACTED]

\* BEFORE JEROME WOODS, II,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
\*  
\* OAH No.: DHS-[REDACTED]-01-19-06127

\* \* \* \* \*

**DECISION**

STATEMENT OF THE CASE  
ISSUES  
SUMMARY OF THE EVIDENCE  
FINDINGS OF FACT  
DISCUSSION  
CONCLUSIONS OF LAW  
ORDER

**STATEMENT OF THE CASE**

The Appellant was receiving benefits for herself and her children under the Food Supplement Program (FSP or SNAP).<sup>1</sup> On or about February 8, 2019, the [REDACTED] [REDACTED] (local department) notified the Appellant she had been overpaid \$385.00 in FSP benefits in May 2018 and \$199.00 in April 2018, for a total of \$584.00 due to the local department's error. The Appellant was informed that she would be required to pay the amount

<sup>1</sup> The federal program is entitled the "Supplemental Nutrition Assistance Program" (SNAP).

of overissued<sup>2</sup> benefits. On February 22, 2019, the Appellant filed a request for a fair hearing. 7 C.F.R. § 273.15(h) (2018);<sup>3</sup> *see also* Code of Maryland Regulations (COMAR) 07.01.04.03B.

On March 28, 2019, I held a hearing at the local department's office in [REDACTED] Maryland. 7 C.F.R. § 273.15(a); *see also* COMAR 07.01.04.21B. [REDACTED] Intake Supervisor, represented the local department. The Appellant represented herself.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Department of Human Services (DHS), and the Rules of Procedure of the Office of Administrative Hearings govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2018); 7 C.F.R. § 273.15(l)-(q); COMAR 07.01.04; and COMAR 28.02.01.

### ISSUES

Did the local department properly establish a claim against the Appellant for the receipt of \$584.00 in overissued FSP benefits for April and May 2018? If so, is the local department entitled to recover the overpayment?

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<sup>2</sup> An "overpayment" is defined in the controlling regulations as "the amount by which a benefit payment received by or for an assistance unit exceeds the amount it was eligible to receive." COMAR 07.03.14.01B(7)(a). The term "overissuance" is used in COMAR 07.01.04 and COMAR 07.03.17, but is not defined in either chapter. The FSP Manual provides that an overissuance is "[t]he receipt by a household of more FSP benefits than it was entitled to receive." FSP Manual, § 500 (Glossary) (Rev. May 2017). Thus, I reasonably conclude that these terms have an identical meaning and can be used interchangeably.

<sup>3</sup> The federal regulations that apply to the FSP are found in Title 7 of the Code of Federal Regulations (C.F.R.). Unless otherwise noted, all citations herein to the C.F.R. are to the 2018 volume.

## SUMMARY OF THE EVIDENCE

### Exhibits

I admitted the following exhibit offered by the local department:

LD Ex. 1 Hearing Summary, March 12, 2019, with the following attachments:

- Notice of Hearing, March 7, 2019;
- Letter from the local department to the Appellant, March 14, 2019;
- Notice Content, print date, March 28, 2019;
- Household address, print date March 14, 2019;
- Narrative, print dates, March 14 and March 28, 2019;
- Notice of Missed Appointment, May 7, 2018;
- Benefits History, print date, March 14, 2019;
- Assistance Status, print date, March 28, 2019;
- Letter from the local department to the Appellant, April 25, 2018;
- Letter from the local department to the Appellant, May 7, 2018;
- Application for Assistance, April 20, 2018; and
- Benefit Error Listing and Wage Listing, print date, May 29, 2018.

The Appellant did not offer any exhibits.

### Testimony

Ms. [REDACTED] testified on behalf of the local department. The Appellant testified on her own behalf.

## FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. On April 20, 2018, the Appellant applied for FSP benefits for herself and her [REDACTED] children by submitting an application in person at the local department.
2. The Appellant's address of record at the time of application, was [REDACTED] [REDACTED] Maryland [REDACTED]. She continues to live there.
3. The address of record was contained on the FSP application.

5. On April 25, 2018, Ms. [REDACTED] the Appellant's case manager, sent the Appellant a notice at her address of record informing her that she had a walk-in redetermination interview scheduled for May 7, 2018 at [REDACTED] a.m. to discuss the April 20, 2018 application.

6. The Appellant did not appear for an interview on May 7, 2018.

7. On May 7, 2018, the local department sent the Appellant a notice, which informed her that she missed her redetermination interview, and that if she wanted FSP benefits she needed to reschedule a phone interview or walk into the office for an in-person interview any Monday, Wednesday or Friday between the hours of 8:00 a.m. and 11:00 a.m.

8. On May 21, 2018, thirty days from the date of the Appellant's FSP application, the Appellant's case was closed for failure to have an interview.

9. On May 23, 2018, the Appellant went to the local department and had her interview with a different case worker.

10. Instead of beginning the Appellant's FSP benefits from May 23, 2018, the date the Appellant complied with the interview requirements, the local department authorized the issuance of FSP benefits from April 20, 2018, the date of the FSP application.

11. From April 20, 2018 through April 30, 2018, the Appellant was overissued \$199.00 in FSP benefits.

12. For the month of May 2018, the Appellant was overissued \$385.00 in FSP benefits.

13. In February 2019, the local department sent the Appellant notice of the overissuance of FSP benefits.<sup>4</sup>

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<sup>4</sup> The date of the notice is not apparent from the evidentiary record. It is undisputed the Appellant received written notification. That notification generated the Appellant's appeal.

14. The local department staff and the Appellant met on March 14, 2019 to discuss the overissuance of FSP benefits, but did not resolve the matter.

## DISCUSSION

### ***LEGAL FRAMEWORK***

The purpose of the FSP is to provide “nutrition assistance to help eligible low-income households buy the food they need for good health.” COMAR 07.03.17.01; *see also* 7 C.F.R. § 271.1(a). Local departments of social services administer the FSP under the supervision of the DHS and in accordance with State and federal law. Md. Code Ann., Hum. Servs. § 5-501(c) (Supp. 2018); *see also* 7 C.F.R. pt. 272. Through the FSP Manual, the Secretary of DHS provides guidance to local departments relating to the interpretation of State and federal regulations.<sup>5</sup>

A household is eligible for FSP benefits if, among other requirements, its members meet the income and resource limitations of the program. COMAR 07.03.17.25 and 07.03.17.42B. To establish FSP eligibility, an applicant must complete an initial application form and subsequent recertification application forms, attend an interview with the local department’s representative, and provide to the local department the required verification of relevant information. COMAR 07.03.17.14E.

### ***Interview Requirements***

7 C.F.R. § 273.2 (e)(3) states “[t]he State agency may not deny a household’s application prior to the 30th day after application if the household fails to appear for the first scheduled

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<sup>5</sup> The FSP Manual is updated through Family Investment Administration Action Transmittals. These transmittals will be cited if applicable.

interview.” Maryland regulations also follow the federal law regarding the interviews and the required notice.

A. The interview may take place:

- (1) When the applicant comes to the local department to request benefits;
- (2) When the local department representative visits the applicant’s residence if §C of this regulation applies;
- (3) When the local department representative meets with the applicant on a date scheduled after the request was received; or
- (4) By telephone.

B. If the applicant fails to keep the appointment for a face-to-face interview or scheduled telephone interview, the applicant is responsible for scheduling another appointment. If the applicant:

- (1) Requests a second appointment and is determined eligible, the local department shall issue benefits from the date of application; or
- (2) Does not request a second appointment, the local department may deny the application on the 30th day after application.

COMAR 07.03.17.15.

The FSP Manual section 402.6 provides specific guidelines used by the local department to schedule an interview and to provide notice when interviews are missed.

A. The local department:

1. Must schedule all interviews as promptly as possible to ensure that timeliness standards are met.
2. Should allow a minimum of 10 days to allow the customer to return any required verification.

B. If the customer does not appear for the in-office interview or is not available for the telephone interview, the local department must notify the household that it missed the appointment and that the household is responsible for rescheduling the appointment.

C. If the household requests a second interview, the local department must schedule one.

FSP Manual § 402.6.

### ***Overpayments***

The local department is required to establish a claim against a household that has received more FSP benefits than it was entitled to receive, regardless of whether the overpayment results from agency error, inadvertent household error, or fraud. COMAR 07.03.17.54A, B, D and E. The overissued amount is the difference between the allotment that the household received and the amount it would have received if information had been known and acted on in a timely manner. COMAR 07.03.17.54G(2). If a household receives benefits to which it is not entitled, for any reason, generally, it must repay those benefits even if no one in the household is at fault for the overpayment. *See* COMAR 07.03.17.54.

To correct an overpayment, the local department is required to promptly determine the correct benefit amount and calculate the total amount of the overpayment retroactive to the time of the error. COMAR 07.03.14.03A. The local department then deducts the amount of the correct allotment from the amount of allotment the household actually received. The difference is the amount of the overpayment or overissuance. COMAR 07.03.14.01B(7)(a).

The State regulations set forth certain limited exceptions to the requirement that an overissuance be repaid. These apply if the local department failed to ensure that the household signed the application form, that it completed a current work regulation form, that it was certified in the correct department area, or that the local department did not discover the error which caused the overpayment until more than twelve months after the overpayment occurred. COMAR 07.03.17.54D. None of these exceptions is present in the Appellant's case.

### ***Burden of Proof***

As the Appellant was receiving FSP benefits at the time of the local department's action, the local department has the burden of proving that its actions were correct, by a preponderance of the evidence. Md. Code Ann., State Gov't § 10-217 (2014); COMAR 07.01.04.12B(2) and C(2). To prove something by a "preponderance of the evidence" means "to prove that something is more likely so than not so," when all of the evidence is considered. *Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002); *see also Mathis v. Hargrove*, 166 Md. App. 286, 310 n.5 (2005).

### ***THE MERITS OF THIS CASE***

The Appellant does not dispute the amount of the overpayment but maintains that she appeared for her interview on April 20, 2018 and as such, should not have an overissuance in FSP benefits because she cooperated with the local department. Therefore, the only issue before me is whether the local department is entitled to recover the April and May 2018 total overpayment from the Appellant, in the amount of \$584.00 (\$199.00 + \$385.00) because the Appellant failed to timely participate in an interview. For the reasons below, I find that the local department has met its burden.

There is no dispute that the Appellant was required to participate in an interview when she applied for FSP benefits. Failure to do so could result in lack of cooperation which would be grounds to deny an application. COMAR 07.03.17.17A.

The local department informed the Appellant by written notice that her required interview could either be in-person or by telephone and the application may be denied if an interview did not take place.

The local department candidly acknowledged that the Appellant was overpaid benefits due to the local department's failure to begin the FSP benefits from the date the Appellant was compliant with the interview requirements (May 23, 2018). Nevertheless, the local department argues pursuant to the regulations governing FSP, the Appellant is required to repay the amount of the overissued benefits, regardless of the fact that the overpayment was due to an agency error.

The Appellant argued that she had her interview with her case manager on April 20, 2018 and further argued she did not receive the notices regarding her required participation in an interview. I do not find the Appellant credible. First, the Appellant claims she was interviewed by her case manager Ms. [REDACTED]. While it is true that the Appellant may have met with her case manager briefly for intake on April 20, 2018, there is no corroborating evidence in the evidentiary record that an interview took place with Ms. [REDACTED] and the Appellant. This is important because the local department's representative maintains that no local department staff person met with the Appellant for an interview prior to May 23, 2018.<sup>6</sup> Ms. [REDACTED] testified that she discussed the Appellant's case with all the persons who handled it and no one had an interview with the Appellant prior to May 23, 2018. The Appellant offered no evidence to corroborate her assertions, including calling Ms. [REDACTED] as a witness. Secondly, with regard to the notices informing the Appellant of her required interview, the notices were mailed to the Appellant at her address of record with the local department. Ms. [REDACTED] testified that the address to which the local department sent the notice was the Appellant's address of record. The United States Postal Service did not return the notices. The Appellant acknowledged her address is the same address to which the local department sent its correspondence. Moreover, the Appellant offered no

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<sup>6</sup> I note that had the interview taken place before the thirtieth day after the April 20, 2018 application, it would have been proper for the local department to issue FSP benefits from the date of the application. COMAR 07.03.17.15B(1).

corroborating evidence supporting her assertions that she was not notified of the interview requirements. For these reasons, I find the Appellant was properly notified of the requirement to participate in an interview and did not do so timely.

Pursuant to COMAR 07.03.17.54, the local department must establish a claim against the Appellant for the overpayment of FSP benefits, even though the overpayment is the result of an agency error. *See* COMAR 07.03.17.54 B, D and E. The local department is required to seek reimbursement for any overissuance beginning twelve months prior to the date the overpayment was discovered. COMAR 07.03.17.54F(1). There is no dispute concerning the time period in this case.

It is undisputed that the local department calculated the overpayment amount to be \$584.00 in FSP benefits from April 20, 2018 through May 2018. I am sympathetic to the Appellant's situation, i.e. that she has to pay back benefits that were provided to her in error. But as recited above, the Appellant must repay the local department the \$584.00 in overissued benefits even though the local department issued the benefits in error.

### **CONCLUSIONS OF LAW**

Based upon the above Findings of Fact and Discussion, I conclude, as a matter of law, that the [REDACTED] properly established a claim against the Appellant for \$584.00 in overissued Food Supplement Program benefits for April 20 through May 2018. COMAR 07.03.17.54A, C(1), D; 7 C.F.R. §273.2(e)(3); COMAR 07.03.17.15. I further conclude that the [REDACTED] is entitled to recover the amount of the overpayment from the Appellant. COMAR 07.03.17.54.

**ORDER**

I **ORDER** that the decision of the [REDACTED] to recover \$584.00 in overissued Food Supplement Program benefits is **AFFIRMED**.

April 15, 2019  
Date Decision Issued

Signature Appears on Original  
[REDACTED]  
Jerôme Woods, II  
Administrative Law Judge

JW/cj  
#179197

**REVIEW RIGHTS**

A party aggrieved by this final decision may file a written petition for judicial review with the Circuit Court for Baltimore City, if any party resides in Baltimore City or has a principal place of business there, or with the circuit court for the county in which any party resides or has a principal place of business. The petition must be filed within thirty (30) days of the date of this decision. Md. Code Ann., State Gov't § 10-222(c) (Supp. 2018); Md. Rules 7-201 through 7-210. A separate petition may be filed with the court to waive filing fees and costs on the ground of indigence. Md. Rule 1-325. The Office of Administrative Hearings is not a party to any review process.

**Copies Mailed To:**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Emailed)  
[REDACTED]