

**JURISDICTION:**

Notice dated 12/20/04 was sent to the appellant stating that the Department was planning to reduce her TAFDC benefits because "we are taking back the overpayment that you received in Transitional Assistance benefits" (106 CMR 706.200, 706.210, 706.250, 706.260, 706.270 and 706.290) (Exhibit B).

The appellant received another notice, dated 10/15/04, that stated the Department was planning to increase her TAFDC because "we will stop taking back a monthly amount of Transitional Assistance benefits because you have paid back all of the extra Transitional Assistance benefits tht you received" (106 CMR 706.200, 706.210, 706.260, 706.270, 706.280 and 706.290) (Exhibit A).

The appellant filed these appeals on 01/06/05 and therefore, they are timely (106 CMR 343.140(B)/367.100).

Since the appeals were filed within the advanced notice period, the appellant is entitled to and has been receiving a continuation of the former level of benefits pending the outcome of this hearing subject to recoupment by the Department (106 CMR 343.250).

The amount of assistance is grounds for appeal (106 CMR 343.230/367.025).

**GOOD CAUSE:**

The notice for the hearing, dated 03/25/05, informed the appellant, in accordance with 106 CMR 343.320 that she would be required to show good cause for failing to appear at the previously scheduled hearings of 02/07/05 and 03/18/05.

**ISSUE:** (Good Cause only)

Did the appellant have good cause for failing to appear on the prior hearing dates?

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**SUMMARY OF EVIDENCE:** (Good Cause only)

On good cause, the appellant's representative from legal services introduced a letter dated 03/16/05 sent to the Division of Hearings (Exhibit M).

**FINDINGS OF FACT:** (Good Cause only)

The record shows that the appellant failed to appear at the hearing(s) scheduled on 02/07/05 and 03/18/05, and I so find. (See relevant hearing notice(s) in the appeal folder.)

The record also shows that the appellant never received notice of the hearing scheduled on 02/07/05. The record further shows that her representative needed more time to prepare her case and was not yet ready to proceed on 03/18/05.

**CONCLUSIONS OF LAW:** (Good Cause only)

106 CMR 343.320 (B) provides that a finding by the referee that good cause has not been shown shall result in the dismissal of the appeal. Vacate procedures are set forth at (C). Circumstances that constitute good cause are found at (a) through (e) of (D)(1) subject to (D)(2).

I have found that the appellant failed to appear on 02/07/05 because she did not receive the notice of that hearing and she did not show on 03/18/05 because her representative was not prepared to go forward on that date due to the complexities of the case.

I conclude that the appellant has shown good cause under 106 CMR 343.320(D).

Accordingly, a decision will be rendered on the merits of the appeal.

**ACTION BY DEPARTMENT:**

The Department plans to reduce the appellant's benefits.

**ISSUE:**

Can the Department reduce the appellant's grant to recoup an overpayment?

**SUMMARY OF EVIDENCE:**

The Department representative testified that he does not know why the notice dated 10/15/04 was sent to the appellant since she has not yet fully repaid the overpayment. He stated the appellant still owes \$9935.36 on the established overpayment. He introduced the information from the Recovery Unit (Exhibit C).

The appellant's representative stated that the appellant is not disputing the alleged balance of unpaid overpayment. However, she argued that the Department is barred from the current recoupment on two grounds. First, she stated that the statute of limitations to recover this overpayment is six years. The representative argued that because the cause of action accrued over six years ago, the Department cannot

**SUMMARY OF EVIDENCE:** (Continued)

now recoup the overpayment. Second, she stated that the Department's regulations prevent them from recovering an overpayment from the appellant because she is not a grantee of the current grant. She introduced a notice dated 11/16/82 (Exhibit D), a court ledger regarding the appellant's case (Exhibit E), a Mass Trial Courts Accounts History (Exhibit F), a letter from District Court to the Recovery Unit dated 07/13/00 (Exhibit G), a bill for the period 09/18/00 to 10/17/00 (Exhibit H), a payment history (Exhibit I), a notice dated 03/16/05 (Exhibit J), a bill for the period 03/17/05 to 04/16/05 (Exhibit K), a bill for the period 10/16/04 to 11/15/04 (Exhibit L) and a Memorandum dated 04/06/05 (Exhibit N).

**FINDINGS OF FACT:**

In 1983 the appellant pled guilty to welfare fraud and was ordered to repay \$13,477.86 (Exhibit E). The court dismissed the criminal case against the appellant on 04/19/96; discharged the balance of the restitution; and, on 07/13/00, referred the case to the Department's Centralized Recoupment Unit (Exhibits N and G). The Department began billing the appellant directly for the remaining balance of \$10,140.36 in September, 2000 (Exhibit H).

The appellant now receives TAFDC for her three grandchildren. The Department has taken action to reduce her grant as a means of recouping the remaining balance on the overpayment (Exhibit B). The current balance on the overpayment is \$9,935.36 (Exhibit C).

**CONCLUSIONS OF LAW:**

An overpayment exists when an assistance unit receives assistance for which it is not eligible or the assistance exceeds the amount for which it was eligible. However, an unaccessed EBT cash benefit shall not be considered an overpayment (106 CMR 706.200).

All overpayments are subject to recovery by the Department. Overpayments involving possible fraud shall be referred to the Bureau of Special Investigations (BSI) (106 CMR 706.210).

The Department shall recover overpayments only from the grantee(s), whether eligible or ineligible, of the assistance unit that was overpaid. An overpayment shall be recovered from the grantee(s) even if the grantee(s) was overpaid in one cash assistance program and is now receiving benefits in another cash assistance program (106 CMR 706.250(B)).

I have found that the appellant received an overpayment from the Department, the current balance of which is \$9935.36.

Based on the above regulations, I conclude that the Department may recover this overpayment from the appellant. The fact that she is not receiving assistance for herself does prevent the Department from recouping the overpayment via grant reduction of the appellant's current case. The regulation at Section 706.250(B) simply states that the Department may only recover overpayments from grantees of assistance unit's that were overpaid. The appellant was the grantee of an assistance unit that was overpaid. Therefore, the Department may recover the overpayment from her. She now receives assistance from the Department,

**CONCLUSIONS OF LAW:** (Continued)

and, although she is not part of that assistance unit, the Department may recover the overpayment from her current grant.

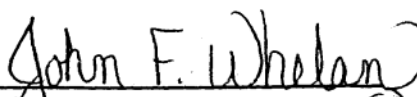
The appellant's representative also argues that the Department may not reduce the appellant's current grant to recover the overpayment because that action is barred by the statute of limitations. That argument is not persuasive. She has stated that this is a contract action and therefore, carries a six year statute of limitations. I do not agree that the appellant and Department have entered into a contract. She did not receive benefits from the Department simply in return for agreeing to comply with the income requirements, as stated in the representative's memorandum. There are countless other requirements with which the appellant needed to comply in order to continue receiving benefits. These are a uniform set of regulations that applied to all recipients, not bargained-for consideration agreed to by the appellant and the Department.

However, even if there is a six year statute of limitations, I do not believe the Department has failed to take recovery action within six years from the time of the cause of action. The Department began recovering the overpayment through a criminal case. That case was dismissed on 04/19/96. The Department began directly billing the appellant in September, 2004. Therefore, even if there is a six year statute of limitations, I conclude that the Department acted to recover the overpayment within six years.

Therefore, this appeal is denied.

**ACTION FOR THE DEPARTMENT:**

Proceed with planned action.

  
John F. Whelan  
HEARING OFFICER

JFW/jw

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