

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Timothy Lockhart,	:	
Petitioner	:	
	:	
v.	:	No. 743 C.D. 2011
	:	Submitted: September 30, 2011
Department of Public Welfare,	:	
Respondent	:	

BEFORE:     HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge  
                 HONORABLE ROBERT SIMPSON, Judge  
                 HONORABLE JAMES R. KELLEY, Senior Judge

**OPINION NOT REPORTED**

**MEMORANDUM OPINION  
BY JUDGE SIMPSON**

**FILED: December 19, 2011**

Timothy Lockhart (Petitioner), representing himself, petitions for review of an order of the Bureau of Hearings and Appeals (BHA) of the Department of Public Welfare (DPW) dismissing as moot his challenge to recoupment of food stamp benefits. Petitioner, a participant in the Supplemental Nutrition Assistance Program, 7 U.S.C. §§2011-2036 (the Act), formerly the Food Stamp Program, challenges the calculation of the recoupment, benefits allotted and the accuracy of DPW's subsequent recalculation. We reverse and remand.

**Background**

Petitioner receives food stamp benefits through the Bucks County Assistance Office. In August 1999, the County Assistance Office advised Petitioner that he received an overissuance of food stamp benefits based on an administrative error. The County Assistance Office calculated his benefits using \$892.00 as his gross income instead of his actual income of \$1340.00, which

resulted in Petitioner receiving an overissuance of benefits. Pursuant to a notice issued August 14, 2001, the Office of Inspector General (OIG) began recouping the alleged overissuance, calculated at \$2185.00, by reducing Petitioner's food stamp allotment. The recoupment period was from June 1998 through July 1999. In April 2003, Petitioner asked DPW to forgive the recoupment since it was based on DPW's administrative error.

For a period of time in early 2009, Petitioner did not receive food stamps. However, the OIG had not collected the total recoupment. When Petitioner began receiving food stamps again in May 2009, he received a collection notice, the Food Stamp Reduction Notice (2009 Notice), that OIG would resume recoupment for the \$835.00 allegedly remaining due. Petitioner timely appealed the 2009 Notice, arguing he paid more than half the recoupment to date and that none of the recoupment was due to his own actions. He also challenged the calculation of the recoupment allegedly remaining due.

The BHA held a telephonic hearing on July 29, 2009. DPW was ordered to produce evidence that was not provided to Petitioner. BHA issued a final order stating the OIG's original overpayment calculation was correct.<sup>1</sup> Petitioner sought reconsideration from the Secretary of DPW, arguing the recoupment calculation was incorrect. DPW's Secretary granted reconsideration and issued a final order upholding BHA's decision.

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<sup>1</sup> DPW contends in its brief that BHA approved OIG's calculation in *dicta*. However, DPW did not submit that decision for this Court's review.

Petitioner then appealed to this Court in Lockhart v. Department of Public Welfare, docketed at 849 C.D. 2010. Prior to briefing the issues in that appeal, DPW and OIG “agreed to stop recoupment ... and agreed to recalculate the claim to see if [Petitioner] is owed reimbursement of any [benefits].” DPW Application for Remand, ¶4. DPW requested remand, which this Court granted, for the express purpose of recalculating the recoupment.

Prior to the hearing on remand, DPW unilaterally shortened the overissuance period to conform to the maximum 12-month recoupment period for overpayments caused by administrative errors. 55 Pa. Code §501.12(b). However, DPW used the same monthly amount. Accordingly, DPW recalculated the overissuance claim, thereby reducing its amount from \$2185.00 to \$1430.00. Because OIG already collected \$1490.00 from Petitioner, the County Assistance Office restored \$60.00 in food stamp benefits to him on September 28, 2010, and closed the claim as settled.

On remand, Administrative Law Judge Carol Castillo (ALJ) held a telephonic hearing on February 14, 2011, at which an OIG Investigator and Petitioner testified. The Investigator testified as to DPW’s recalculation. The Investigator testified that the shortened claim period changed the recoupment total, which resulted in restoring \$60.00 of food stamp benefits to Petitioner. The Investigator did not testify regarding the monthly amounts or deductions. Petitioner testified that something was “wrong enough to have it revisited” and that he never received documentation to show the recalculation of the overissuance to establish a zero balance. Notes of Testimony, 2/14/11, at 8.

The ALJ did not take evidence to verify the amount of the monthly recoupment/benefits calculation during the 2011 hearing. The ALJ ruled that the full overissuance was collected and that the refund of \$60.00 to Petitioner made him whole. Thus, the ALJ dismissed Petitioner's appeal as moot. The ALJ advised that Petitioner's challenge to the calculation, including the amount of certain deductions, was "outside the scope of this hearing and should have been appealed with the initial notice issued on August 14, 2001" (Initial Notice).<sup>2</sup> ALJ Adj. at 4. In the Adjudication, the ALJ explained the shelter deduction to differentiate it from shelter costs and confirmed Petitioner received the proper excess shelter deduction for his monthly amount. BHA issued a final administrative order affirming the ALJ's dismissal.

Petitioner filed a petition for review from BHA's order.<sup>3</sup> Specifically, Petitioner challenges the amount of recoupment calculated and credited because he asserts the calculations did not use the proper shelter deduction or include his utility allowance. He claims DPW should have verified its calculations to establish that he is not entitled to additional refunds and to show its calculation is in accordance with the Supplementary Handbook.

DPW argues that the amount of the overissuance cannot be challenged since Petitioner did not challenge it in 2001 when he received the Initial Notice.

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<sup>2</sup> There is no copy of the August 14, 2001 notice in the certified record.

<sup>3</sup> Our review is limited to a determination of whether an error of law was committed, necessary findings of fact were unsupported by substantial evidence, or constitutional rights were violated. Luhovey v. Dep't of Pub. Welfare, 387 A.2d 978 (Pa. Cmwlth. 1978).

DPW asks this Court to affirm BHA on alternate grounds and find that DPW correctly recalculated the overissuance for the relevant period, recouping the proper monthly amount.

### Discussion

We note that the food stamp program is a joint undertaking of the federal and state governments under which the participating states agree to administer the program in conformity with the provisions of the program and regulations issued pursuant to the Act. See 7 C.F.R. §272.2. Federal regulations mandate that

The State agency shall take action to establish a claim against any household that received an overissuance due to an ... administrative error .... At a minimum, the State agency shall take action on those claims for which ***12 months or less have elapsed*** between the month an overissuance occurred and the month the State agency discovered a specific case involving an overissuance.

Ishler v. Dep't of Pub. Welfare, 518 A.2d 596, 598 (Pa. Cmwlth. 1986)<sup>4</sup> (citing 7 C.F.R. §273.18(b)(2), precursor to current regulation at 7 C.F.R. §273.18(c)(1)(i) setting forth same time frame; emphasis added).

Like many recipients before him, Petitioner asserts that restitution of food stamp overissuance is not proper and frustrates the purpose and spirit of the

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<sup>4</sup> In part, this Court determined that such mandatory recoupment is proper because “recoupment will be had, if at all, by a plan which must first be negotiated with the party against whom recoupment is sought.” Ishler, 518 A.2d at 598. The Court notes that here, DPW did not attempt to negotiate with Petitioner despite seeking a remand for that expressed purpose. DPW Application for Remand, ¶6. As in Ishler, here DPW reduced its claim to 12 months preceding its discovery of the overissuance.

Act, which is intended to permit families of limited income to purchase a nutritionally adequate diet. Luhovey v. Dep't of Pub. Welfare, 387 A.2d 978 (Pa. Cmwlth. 1978). While we sympathize with the plight in which recoupment places recipients like Petitioner, DPW is entitled to recoup the amount of any overissuance, properly calculated, even when overissuance is due to its administrative error. Ishler.

We conclude that the ALJ erred as to the scope of the remand hearing and as to mootness. Initially, we agree that, but for DPW's recalculation on remand, Petitioner could be precluded by failure to appeal the overissuance amount set forth in the Initial Notice. See Otero v. Dep't Pub. Welfare, 517 A.2d 213 (Pa. Cmwlth. 1986). In Otero, the benefit recipient received windfall income in the form of life insurance proceeds, which rendered her ineligible for benefits. Rather than appeal the financial ineligibility determination, Otero allowed her benefits to discontinue and reapplied. DPW then denied her new application because she waived her right to appeal the discontinuance. This Court upheld DPW. However, the current situation involves more complicated facts and procedure, rendering Otero inapposite.

Here, DPW undertook an intervening action when it realized it erred, noting its recoupment calculation exceeded the maximum time frame. Upon discovery of its error, DPW declined to have the case decided on the merits; rather, DPW sought a remand. DPW advised the Court that it would recalculate the proper amount of recoupment. Based on that representation, we remanded the case so DPW could verify the calculations and confirm the total amount of recoupment. DPW also represented that if Petitioner disagreed with the result of the remand, he could appeal. DPW Application for Remand, ¶8.

DPW cannot both recalculate the recoupment and preclude Petitioner's challenge of the revised amount. Were that the case, DPW could avoid review of any overissuance recoupment by simply refunding some amount to a recipient. Due process does not sustain such a result. Knox v. Dep't of Pub. Welfare, 573 A.2d 261 (Pa. Cmwlth. 1990). Rather, due process requires DPW to make available to a claimant the information contained in its case file upon which its decision or action is based, as well as other materials that are relevant to the issues raised by the appeal. Id.; see 55 Pa. Code. §275.3(a)(3). DPW is also responsible for seeing that the case record contains current information, including detailed computation of the grant, allowances and income, before and after implementation of the agency decision or action. See 55 Pa. Code §275.4(g)(2)(iv).

Regarding the scope of the remand hearing, recalculation of the recoupment involves more than the number of months in the recoupment period. It also implicates the propriety of the underlying monthly amount, especially where Petitioner questions that amount. Here, DPW only submitted testimony that the time period was shortened to the 12-month maximum set forth in DPW regulations. DPW did not submit testimony regarding the date of discovery of the overissuance or supply any evidence in the remand proceeding to verify the monthly allotment against which the recoupment was offset. Such evidence would show calculation of each deduction, including allowances for utilities and excess shelter.

As to mootness, in order to properly dismiss the matter as moot, BHA had to find that the \$60.00 refunded in food stamps constituted the entirety of the amount to which Petitioner was entitled. Yet, during the hearing on remand, the

ALJ did not take evidence to show how DPW determined \$1430.00 as the revised overissuance amount. Petitioner is entitled to know the figures underlying DPW's revised calculation. If DPW committed errors in addition to the time frame, Petitioner could be entitled to more than a \$60.00 refund. Absent evidence that the \$60.00 refund made Petitioner whole, BHA's dismissal is unsupportable. Therefore, we reverse BHA's order dismissing Petitioner's appeal as moot.

The current record is inadequate to support BHA's action. The record does not give sufficient detail about the recalculation of the recoupment, including how the monthly amounts were calculated. Petitioner seeks a line-by-line explanation of the recalculation of his recoupment. Given the multiple errors visited upon Petitioner, we conclude he is entitled to it.

Nevertheless, there is some suggestion that a written explanation is available and has been provided to Petitioner at an earlier stage. In particular, DPW contends in its appellate brief that BHA approved the monthly amount calculations and sets forth those calculations in its brief. However, evidence of these calculations, which appear to precede the remand, is not in the record; thus, its contents cannot be verified. Accordingly, we are constrained to remand with instructions.

On remand, DPW shall provide Petitioner with a complete calculation, showing how it reached the revised recoupment amount. In the event that such paperwork does not already exist, DPW must submit evidence to BHA to verify that the calculation of recoupment is properly \$1430.00, and that no additional refunds are due to Petitioner. To do this, DPW shall take into



consideration the utility and excess shelter deductions and use the proper time frame and income amounts.

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ROBERT SIMPSON, Judge

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	:	
Respondent	:	

**ORDER**

**AND NOW**, this 19<sup>th</sup> day of December, 2011, we **REVERSE** the order dismissing Petitioner's appeal and **REMAND** to the Department of Public Welfare to make findings to verify the amount of recoupment as set forth in the foregoing opinion.

Jurisdiction relinquished.

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ROBERT SIMPSON, Judge