

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED]

Claimant

Reg. No: 2008-22863

Issue No: 4013

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

July 22, 2009

Kalamazoo County DHS

ADMINISTRATIVE LAW JUDGE: Marlene B. Magyar

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, an in-person hearing was held on July 22, 2009. Claimant personally appeared and testified.

ISSUE

In May, 2009, did the department properly propose to reduce claimant's monthly State Disability Assistance (SDA) grant?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

- (1) Claimant is an ongoing SDA recipient in [REDACTED]
- (2) On May 27, 2008, the department received a New Hire Employment Report which indicates he started working part-time on April 28, 2008, earning [REDACTED] per hour; his first pay stub was also provided (Department Exhibit #1, pgs 7 and 8).

(3) When the department budgeted claimant's earnings with all the income disregards allowed by policy, his budgetable income for SDA grant determination purposes was reduced to [REDACTED] per month (Department Exhibit #1, pgs 5 and 6).

(4) When the department deducted this amount from claimant's [REDACTED] grant issuance, they determined his monthly SDA allowance would be reduced to [REDACTED]
[REDACTED]

(5) Claimant filed a timely hearing request to protest this reduction; consequently, his grant remained at the higher level pending issuance of this Hearing Decision.

(6) Claimant's hearing was held on July 22, 2009.

(7) At hearing, claimant protested the department's failure to consider his basic living expenses (e. g., rent, utilities, gas, etc.) when calculating his new SDA amount.

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

The applicable departmental policy states:

INCOME

DEPARTMENT POLICY

All Programs

The group composition and program budgeting items specify whose income to count. The program budgeting items might also contain program-specific income deductions or disregards.

Income means benefits or payments measured in money. It includes money a person owns even if NOT paid directly such as stock dividends automatically reinvested and income paid to a representative.

Earned income means income received from another person or organization or from self-employment for duties that were performed for remuneration or profit. Unearned income means all income that is NOT earned income. The item specifies whether the income is earned or unearned.

The amount of income counted may be more than the amount a person actually receives, because it is the amount before any deductions including deductions for taxes and garnishments. The amount before any deductions is called the **gross** amount. PEM, Item 500, p. 1.

Income remaining after applying the policy in this item is called **countable**.

Count all income that is NOT specifically excluded. PEM, Item 500, p. 1.

Wages

All Programs

Wages are the pay an employee receives from another person or organization. Wages include salaries, tips, commissions, bonuses, severance pay and flexible benefits plan funds.

Count an employee's regular wages paid during a vacation or illness as earned income.

Count a wage advance as earnings when the employer actually pays it. Do NOT count the money withheld to offset the advance.

Count wages held by the employer at the request of the employee. However, wages held as a general practice by the employer are NOT income until actually paid.

Exception: Income received in one month that is intended to cover several months (e.g., contractual income) is considered available in each of the months covered by the income.

Count gross wages except as explained in this item for:

- . "EIC"
- . "Flexible Benefits"
- . "Strikers"
- . "Student's Earnings"

PEM, Item 500, p. 15.

DEPARTMENT PHILOSOPHY

The Department's income budgeting policies are designed to support financial self-sufficiency by encouraging families to pursue all available means of income. We offer deductions from earned income so that families are financially advantaged by working. Staff should stress to clients the advantages of obtaining outside income. PEM, Item 518, p. 1.

The benefit month is the month an assistance payment covers. The income month is a calendar month in which countable income is received or anticipated. The income month is the same as the benefit month. PEM, Item 518, p. 1.

Countable income is defined in PEM 500. Available income, the amount of income to budget and when to complete a budget are defined in PEM 505. Use this item to determine the program group's budgetable income and financial eligibility. PEM, Item 518, p. 1.

Available income: Income actually received or reasonably anticipated. Reasonably anticipated means that the amount of income can be estimated and the date of receipt is known. Available income includes garnisheed amounts and income received jointly. See PEM 500. PEM, Item 505, p. 1.

Stable income: Income received on a regular schedule that does not vary from check to check based on pay schedules or hours worked. Examples: a job in which the paycheck amounts don't vary and are paid on a regular schedule; or RSDI or SSI. PEM, Item 505, p. 1.

DETERMINING BUDGETABLE INCOME

FIP, SDA, CDC, FAP

Determine budgetable income using countable, available income for the benefit month being processed. PEM, Item 505, p. 2.

WHEN TO COMPLETE A BUDGET

FIP, SDA, CDC, FAP

Client reporting requirements **do not** necessarily affect when a budget must be completed.

Complete a budget when:

- . the department is made aware of or the client reports a change in income that will affect eligibility or benefit level, or
- . a reported change results in the need to convert income to or from a standard monthly amount. PEM, Item 505, p. 8.

Starting Income

For starting income, use the best available information to prospect income for the benefit month. This may be based on expected work hours times the rate of pay. Or if payments from the new source have been received, use them in the budget for future months if they accurately reflect future income.

If the payment is not hourly, use information from the source (e.g., from the employer on the DHS-38), along with information from the client, and/or any checks the client may already have received to determine the prospective amount.

For starting self-employment income, determine the **monthly** gross income to budget based on discussion with the client of what he/she expects to receive on average per month. PEM, Item 505, pp. 6-7.

INCOME DEDUCTIONS

FIP and SDA Only

Income deductions are available at both the member and the group level. Apply deductions in the order they are presented in this item. PEM, Item 518, p. 4.

Earned Income Disregard

Deduct \$200 from each person's countable earnings. Then deduct an additional 20% of each person's remaining earnings. The total

disregard cannot exceed countable earnings. Apply this disregard separately to each program group member's earned income. PEM, Item 518, p. 4.

OVERISSUANCE

FIP, SDA, CDC, FAP

There is no overissuance based on an incorrect prospective budget unless:

- . the client withheld information or provided false information,
- . the department failed to act on known information in a timely manner, or
- . the department made a mathematical error.

Additionally, PAM Item 807, pgs 1 and 2 mandate caseworkers to request New Hire Employment Reports for all recipients who have not reported their jobs, and to update the monthly recipient budgets, if needed.

In this case, the record is clear. The department properly followed the above-referenced policy. The inclusion of claimant's wages into his SDA budget is simply required by policy. Additionally, this Administrative Law Judge has reviewed the department's budgeting process and she finds all calculations were properly made. Unfortunately for claimant, the resulting SDA reduction was inevitable. Consequently, the department's action must be upheld because it is in complete compliance with the department's policies and with the governing laws on which those policies are based.

Claimant's grievance centers on dissatisfaction with the department's current policy. Claimant's request is not within the scope of authority delegated to this Administrative Law Judge pursuant to a written directive signed by the Department of Human Services Director, which states:

Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations or overrule or make exceptions to the department policy set out in the program manuals.

Furthermore, administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940).

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly proposed to reduce claimant's monthly SDA grant.

Accordingly, the department's action is **AFFIRMED**.

/s/ _____
Marlene B. Magyar
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: July 28, 2009

Date Mailed: July 29, 2009

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

2008-22863/mbm

MBM/db

cc:

