

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: 2009-11575
Issue No: 2014; 3015
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 5, 2009
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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, a telephone hearing was held on Thursday, March 5, 2009. The claimant personally appeared and testified on his own behalf.

ISSUE

Did the department appropriately determine that the claimant had excess income for continued eligibility for Medical Assistance (MA) and Food Assistance Program (FAP)?

FINDINGS OF FACT

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

- (1) The claimant was a recipient of FAP and MA benefits.
- (2) On July 25, 2008, the department caseworker sent the claimant a Verification

Checklist, DHS-3503, for the claimant to attend an interview on August 28, 2008 at [REDACTED] to

bring the verification required to determine continue eligibility for FAP and MA. (Department Exhibit 1)

(3) On August 28, 2008, the department caseworker sent the claimant a Notice of Missed Interview, DHS-254, that the claimant missed his interview to re-determine FAP benefits and it was the claimant's responsibility to reschedule the interview before August 31, 2008 or his re-determination would be denied. (Department Exhibit 2)

(4) The department caseworker received verification to the SOLQ system for the Social Security Administration that the claimant was receiving RSDI in the amount of [REDACTED], and a pension of [REDACTED]. The claimant's two daughters were each receiving [REDACTED] per month in RSDI income. (Department Exhibit 3-6)

(5) On September 5, 2008, the department caseworker calculated claimant's continued eligibility for FAP benefits based on the claimant's RSDI income of [REDACTED], the claimant's daughter's RSDI income of [REDACTED] and the claimant's other daughter's RSDI income of [REDACTED] for a total of [REDACTED] in unearned income based on a group size of three. (Department Exhibit 7-8):

- . The claimant qualified for a standard deduction of [REDACTED], resulting in an adjusted gross income for FAP purposes of [REDACTED]
- . The claimant had a total shelter amount of [REDACTED] resulting from rent of [REDACTED] and heat/utility (including telephone) of [REDACTED].
- . The claimant qualified for excess shelter deduction of [REDACTED] resulting from 50% of adjusted gross income of [REDACTED] minus total shelter costs of [REDACTED]
- . As a result, the claimant's net income was determined to be [REDACTED], resulting from the excess shelter amount of [REDACTED] being deducted from the adjusted gross amount of [REDACTED].
- . The claimant qualified for [REDACTED] in FAP benefits because of the additional household income from RSDI and pension.

(6) On September 5, 2008, the department caseworker sent the claimant a notice that the claimant was not eligible for FAP due to excess income. (Department Exhibit 9)

(7) On September 16, 2008, the department received a hearing request from the claimant, contesting the department's negative action.

(8) On November 13, 2008, the department caseworker recalculated the claimant's eligibility for FAP benefits using the family RSDI income, but the claimant was still not eligible by having excess income. (Department Exhibit 10-11)

(9) On November 13, 2008, the department caseworker sent the claimant a notice that he was not eligible because the allotment equaled [REDACTED]. (Department Exhibit 12)

(10) On March 5, 2009, the claimant's eligibility for MA was recalculated using the RSDI income, but not the pension, which resulted in the claimant not being eligible. (Department Exhibit 13-16)

(11) On March 5, 2009, the claimant's eligibility for SSI related MA was calculated using his RSDI income, but not the pension. The claimant's unearned income of [REDACTED] qualified for a [REDACTED] disregard, which resulted in an adjusted gross income of [REDACTED] (Department Exhibit 18-21):

. The claimant had excess income for Group 2 where his household income exceeded the eligible amount.

. The claimant's total needs were [REDACTED] for his protected income level and shelter area. The claimant had an excess income deductible of [REDACTED], resulted from the net income of [REDACTED] minus total needs of [REDACTED].

(12) On March 5, 2009, the department caseworker sent the claimant a notice that he had excess income for Group 2 MA. (Department Exhibit 17)

(13) During the hearing, the claimant stated that he does receive RSDI of [REDACTED], a pension of [REDACTED], and his two daughters receive [REDACTED] a month each of RSDI income.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

The Food Assistance Program (FAP) (formerly known as the Food Stamp (FS) program) is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the FAP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3001-3015. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

If an **ongoing** MA recipient or active deductible client has excess assets, initiate closure. However, delete the pending negative action if it is verified that the excess assets were disposed of. Payment of medical expenses, living costs and other debts are examples of ways to dispose of excess assets without divestment. LTC and waiver patients can be penalized for divestment (see PEM 405). PEM, Item 400, p. 4.

ASSETS

DEPARTMENT POLICY

FIP, SDA, LIF, Group 2 Persons Under Age 21, Group 2 Caretaker Relative, SSI-Related MA, and AMP

Assets must be considered in determining eligibility for FIP, SDA, LIF, Group 2 Persons Under Age 21 (G2U), Group 2 Caretaker Relative (G2C), SSI-related MA categories and AMP.

- . “CASH” (which includes savings and checking accounts)
- . “INVESTMENTS”
- . “RETIREMENT PLANS”
- . “TRUSTS” PEM, Item 400.

SSI-Related MA Asset Limit

SSI-Related MA Only

For Freedom to Work (PEM 174) the asset limit is \$75,000. IRS recognized retirement accounts (including IRA's and 401(k)'s) may be of unlimited value.

For Medicare Savings Program (PEM 165) and QDWI (PEM 169) the asset limit is:

- . \$4,000 for an asset group of one
- . \$6,000 for an asset group of two

For all other SSI-related MA categories, the asset limit is:

- . \$2,000 for an asset group of one
- . \$3,000 for an asset group of two. PEM, Item 400, p. 4.

AVAILABLE

FIP, SDA, LIF, G2U, G2C, SSI-Related MA and AMP

An asset must be available to be countable. **Available** means that someone in the asset group has the legal right to use or dispose of the asset. PEM, Item 400, p. 6.

Assume an asset is available unless evidence shows it is **not** available. PEM, Item 400, p. 6.

Lump Sums and Accumulated Benefits

FIP, SDA and AMP Only

Lump-sums and accumulated benefits are assets starting the month received.

A person might receive a single payment that includes both accumulated benefits and benefits intended as a payment for the current month. Treat the portion intended for the current month as income. PEM, Item 400, p. 9.

LIF, G2U, G2C, SSI-Related MA

Lump sums and accumulated benefits are income in the month received. See PEM 500 about countable income policy.

Exception: The following are assets:

- . Income tax refunds
- . Nonrecurring proceeds from the sale of assets
- . Payments that are excluded assets PEM, Item 400, p. 10.

RETIREMENT PLANS

FIP, SDA, LIF, G2U, G2C, SSI-Related MA and AMP

This section is about the following types of assets:

- . Individual retirement accounts (IRAs)
- . Keogh plans (also called H.R. 10 plans)
- . 401k plans
- . Deferred compensation
- . Pension plans
- . Annuities--An annuity is a written contract establishing a right to receive specified, periodic payments for life or for a term of years. PEM, Item 400, pp. 14-15.

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.

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.

Standard Monthly Amount

Stable and Fluctuating Income

A standard monthly amount must be determined for each income source used in the budget.

Convert stable and fluctuating income that is received more often than monthly to a standard monthly amount. Use one of the following methods:

- . Multiply weekly income by 4.3.
- . Multiply amounts received every two weeks by 2.15.
- . Add amounts received twice a month.

This conversion takes into account fluctuations due to the number of scheduled pays in a month.

Exception: Do not convert income for the month income starts or stops if a full month's income is not expected in that month. Use actual income received or income expected to be received in these months. PEM, Item 505, p. 7.

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.

PROSPECTIVE BUDGETING/INCOME CHANGE PROCESSING

DEPARTMENT PHILOSOPHY

A group's benefits for a month are based, in part, on a prospective income determination. A "best estimate" of income expected to be received by the group during a specific month is determined and used in the budget computation.

Get input from the client whenever possible to establish this "best estimate" amount. The client's understanding of how income is estimated reinforces reporting requirements and makes the client an active partner in the financial determination process. PEM, Item 505, p. 1.

DEPARTMENT POLICY

FIP, SDA, CDC and FAP

A group's financial eligibility and monthly benefit amount are determined using:

- . actual income (income that was already received), and/or
- . prospected income amounts (not received but expected).

Only countable income is included in the determination (see PEM 500).

Each source of income is converted to a standard monthly amount, unless a full month's income will not be received (see Standard Monthly Amount in this item). 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.

FAP INCOME BUDGETING

DEPARTMENT POLICY

This item applies **only to FAP**

A non-categorically eligible Senior/Disabled/Veteran (SDV) FAP group must have income below the net income limits. PEM, Item 550, p. 1.

A non-categorically eligible, non-SDV FS group must have income below the gross and net income limits. PEM, Item 550, p. 1.

Use **only** available, countable income to determine eligibility. PEM 500 defines countable income. PEM 505 defines available income and income change processing. This item describes income budgeting policy. PEM, Item 550, p. 1.

In this case, the claimant receives RSDI income of [REDACTED] and a pension of [REDACTED]. The claimant's daughters who are part of his household each receive [REDACTED] per month in RSDI income.

The claimant was determined to have excess income for FAP benefits only using his RSDI income and his two daughters RSDI income, but the pension of [REDACTED] was not calculated. The claimant was also determined excess assets for Group 2 FIP MA, but qualified for a spend-down of [REDACTED] using SSI MA still not using his pension of [REDACTED]. Therefore, the department has established that it was acting in compliance with department policy when it made the determination that the claimant had excess income for purposes of MA and FAP eligibility, but

the claimant did qualify for a SSI MA spend-down of [REDACTED] that did not include the calculation of the claimant's [REDACTED] pension.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department correctly determined that the claimant was not eligible for MA and FAP benefits because of excess income. The department can recalculate the claimant's SSI MA spend-down by including his pension and his RSDI income before SSI MA benefits can be reinstated.

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

/s/ _____
Carmen G. Fahie
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: March 27, 2009

Date Mailed: March 30, 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.

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The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing 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.

CGF/vmc

cc:

