

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: 2009-13524
Issue No: 4013
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 25, 2010
Kent 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, a telephone hearing was held on February 25, 2010. Claimant personally appeared and testified.

ISSUE

Did the department properly deny claimant's December 3, 2008 State Disability Assistance (SDA) application based on excess income?

FINDINGS OF FACT

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

- (1) On December 3, 2008, claimant applied for SDA.
- (2) During the application process, claimant timely provided the local office with check stub income verifications from her then employer, [REDACTED] which show she received [REDACTED] in gross income, as well as a handwritten statement personally attesting

to additional self-employment income from claimant's cosmetology services (Department Exhibit #1 and #3).

(3) When the department budgeted this income and compared it to the monthly income limit necessary to qualify for SDA, they determined claimant was not eligible due to excess income (Department Exhibit #1, pgs 2 and 3).

(4) On January 12, 2009, the local office sent claimant a written notice advising her of their SDA application denial and of the reason for same; whereupon, claimant filed a hearing request to dispute the issue (Department Exhibit #1, pg 1).

(5) Claimant's hearing was held on February 25, 2010.

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.

EMPLOYMENT INCOME

All Programs

Self-Employment

A person who runs his own business is self-employed. This includes selling goods, farming, direct services (e.g., child care or personal care services), and operating a facility that provides services (e.g., adult foster care home, room and board).

A person who provides child care in his/her home is self-employed. **Note:** A person who provides care at the child's home (e.g., day care aide) is an employee of the child's parent/substitute parent. He/she is not self-employed.

Self-Employed or an Employee?

It can be difficult to determine if someone is self-employed or is an employee of someone else. The guidelines below are provided to help you decide. These are usually indicators that someone is self-employed:

- . The person sets his/her own hours.
- . The person provides his/her own tools used on the job.
- . The person is responsible for the service being provided and for the methods used to provide the service.
- . The person collects payment for the services provided from the person paying for it.

Countable Self-Employment Income

Countable earnings from self-employment equal the total proceeds **minus** allowable expenses of producing the income. If allowable expenses exceed the total proceeds, the amount of the loss cannot

offset any other income **except** for farm loss amounts. See “Farming Expenses” below. PEM, Item 500, pp. 12-13.

Allowable expenses are the **higher** of:

- . 25% of the total proceeds, **or**
- . actual expenses if the client chooses to claim and verify the expenses. PEM, Item 500, p. 13.

Additionally, the department’s policy at RFT 225, pg 1 (effective 10/1/08) specifically states the department’s SDA monthly income limit is \$269.

The facts of record in this case are not in dispute. The verifications claimant herself provided at SDA application clearly show she exceeded the department’s SDA income limit. Consequently, no basis exists in fact, law or policy to reverse the department’s application denial.

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 denied claimant's December 3, 2008 SDA application based on excess income.

Accordingly, the department's action is AFFIRMED.

/s/

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

Date Signed: March 2, 2010

Date Mailed: March 3, 2010

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.

MBM/db

cc:

