

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: 2009-17211

Issue No: 3002; 3003

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 29, 2009

Clare County DHS

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

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 hearing was held on April 29, 2009.

ISSUE

Was the claimant's FAP allotment computed and allocated correctly?

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 was receiving a Food Assistance Program (FAP) allotment budget of \$450.
- (2) Claimant submitted a semi-annual contact review of the FAP benefits.

(3) Claimant submitted documentation showing the trucking income for claimant's husband as provided on statements provided to claimant from the trucking company he contracted for.

(4) Claimant's husband is an individual owner operator with his trucking company, which means that his pay is treated as self-employment, but the company provides him with upfront money to cover expenses that is paid back when the company pays claimant's husband for the run.

(5) DHS allowed 25% for expenses even though the statements showed that claimant's actual expenses were far greater.

(6) DHS ran the FAP budget using gross income and 25% expenses, which put claimant above the gross income limit for FAP benefits and cutting the claimant off of FAP benefits.

CONCLUSIONS OF LAW

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).

When determining eligibility for FAP benefits, the household's total income must be evaluated. All earned and unearned income of each household member must be included unless specifically excluded. PEM, Item 500. A standard deduction from income of \$135 is allowed for each household. Certain non-reimbursable medical expenses above \$35 a month may be

deducted for senior/disabled/veteran group members. Another deduction from income is provided if monthly shelter costs are in excess of 50% of the household's income after all of the other deductions have been allowed, up to a maximum of \$300 for non-senior/disabled/veteran households. PEM, Items 500 and 554; RFT 255; 7 CFR 273.2.

Furthermore, countable self-employment income equals the total proceeds minus the allowable expenses of producing the income. Allowable expenses are the higher of 25% of the gross proceeds, or the actual expenses, should the claimant choose to claim and verify the expenses. Allowable expenses include equipment expenses and fuel. PEM 500.

Self-employment income can be verified through business receipts, accounting records, or income tax returns **or the equivalent**. Self-employment expenses may be verified through business receipts **or the equivalent**. It is important to note that PEM 500 does not limit verification only to those items listed under "Verification Sources". It specifically states that an equivalent source may be used.

In this case, the Administrative Law Judge has reviewed the FAP budget and finds that the Department grossly overstated the claimant's income.

The Department used Department Exhibit 2, Equipment Statements, which were provided from the trucking company that claimant contracts with, shows claimant's gross income. However, it also shows expenses, such as fuel, lease payments that claimant makes to the company in order to eventually buy his truck, license fees and road fees, that eat up, in some cases, as much as 90% of the claimant's gross income.

The Department testified that it would not take these expenses into account because they were not provided for on a receipt. The Department testified that they believed the only definition of a receipt is something you get at a store that shows an individual purpose.

Leaving aside the fact that the plain language of PEM 500 allows the “equivalent” of anything on this list (making the Department’s interpretation of what could be used for verification plain error), the Department has apparently never looked up the definition of the word “receipt”. Black’s Law Dictionary 7th Ed. (1999) defines “receipt” as:

receipt, *n.* A written acknowledgement that something has been received.

The statements from claimant’s trucking contractor clearly show that claimant paid several thousand dollars over the course of the month of January alone to the contractor for the purchase of fuel. Claimant also paid over a thousand dollars for the use of his truck, which he is leasing-to-own. The Administrative Law Judge cannot fathom how this could not be considered a receipt, simply because the statement also shows claimant’s gross income, before expenses. There is no rule that says a receipt cannot also be a statement of income. These documents clearly showed claimant’s actual gross income, complete with itemized expenses. There could be no clearer source with which to verify claimant’s actual self-employment income.

Therefore, claimant’s actual expenses were verified, and should have been used in the FAP calculations. The Department was in gross error when it did not allow these statements to count as receipts, simply because it did not meet the Department’s own predetermined ideal of a “receipt”.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department’s decision to exclude claimant’s verification of self-employment expenses was incorrect.

Accordingly, the Department’s decision is, hereby, REVERSED.

The Department is ORDERED to recalculate claimant's FAP allotment using claimant's actual gross income and self-employment expenses, which can be calculated from the documents already in Department possession.

/s/

Robert J. Chavez
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: May 6, 2009

Date Mailed: May 6, 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 60 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.

RJC/cv

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