

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: 2009-21933  
Issue No: 2001  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
October 15, 2009  
Dickinson 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 October 15, 2009. Claimant and her husband personally appeared and testified.

ISSUE

Did the department properly deny claimant's March 20, 2009 Adult Medical Program (AMP) application due to 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) Claimant and her husband are mandatory members of the same household group for determining AMP income eligibility pursuant to BEM Item 214, pg 2.
- (2) On March 20, 2009, claimant filed an AMP application.

(3) The department requested verification of household income, which claimant promptly provided.

(4) Claimant has received [REDACTED] in the amount of [REDACTED] per month since January 2009.

(5) When the department considered unearned this income in combination with claimant's monthly [REDACTED] and her husband's nominal monthly earnings, they determined neither group member was eligible for AMP because the household's income exceeded the [REDACTED] monthly income limit in effect at that time set forth in departmental policy at RFT 236, pg 1 (Department Exhibit #1, pgs 4 and 5).

(6) The department notified claimant in writing her AMP application was being denied due to excess income.

(7) Upon notice, claimant's spouse promptly filed a hearing request to protest this action; the hearing was held on October 15, 2009.

#### CONCLUSIONS OF LAW

The Adult Medical Program (AMP) is established by Title XXI of the Social Security Act; (1115) (a) (1) of the Social Security Act, and is administered by the Department of Human Services (DHS or department) pursuant to MCL 400.10, *et seq.* Department policies are contained in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

The applicable departmental policy requires married adults who reside together to be mandatory members of the same group when assessing their AMP income and asset eligibility. Additionally, the relevant income 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.

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### **RETIREMENT, SURVIVORS, AND DISABILITY INSURANCE (RSDI) (AKA SOCIAL SECURITY BENEFITS)**

#### **All Programs**

RSDI is available to retired and disabled persons, their dependents, and survivors of deceased workers.

Count the gross benefit amount as unearned income. PEM, Item 500, p. 29.

## **RETIREMENT INCOME – OTHER**

### **All Programs**

Refer to the specific sections in this item for policies regarding:

- . Railroad Retirement Board benefits
- . Retirement, Survivors and Disability Insurance (RSDI)
- . U.S. Civil Service and Federal Employee Retirement System

Other retirement income includes annuities, private pensions, military pensions, and state and local government pensions.

Count the gross benefit as unearned income. PEM, Item 500, p. 29.

### **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. PEM, Item 500, p. 15.

Unfortunately for claimant, the department properly denied her disputed AMP application based on excess income. At hearing, neither claimant nor her spouse disputed the department's calculations.

Claimant's grievance centered solely 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 March 20, 2009 AMP application due to excess income.

Accordingly, the department's decision is AFFIRMED.

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

Date Signed: October 19, 2009

Date Mailed: October 20, 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.

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MBM/db

cc:

