

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: 2009-24183
Issue No: 3002; 3003; 1015
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 8, 2009
Oakland 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 July 8, 2009.

ISSUE

Was the claimant's FAP and FIP 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 FIP and FAP benefits in Oakland County.
- (2) Claimant started working at a work experience activity through the Workforce Investment Act.
- (3) Claimant's income was provided entirely under a WIA grant.

(4) Claimant's FAP budget was run using this income and claimant's budget indicated claimant was eligible for FAP benefits of \$491.

(5) Claimant's FIP budget was run and it was determined that claimant was ineligible for FIP and placed on an E-FIP budget of \$10.

(6) Claimant filed for hearing on 5-8-09, alleging that DHS incorrectly computed her budgets by including the WIA on-the-job training income, and therefore, allocated the wrong amount of FAP and FIP 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).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 USC 601, *et seq.* The Department of Human Services (DHS or department) administers the FIP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3101-3131. The FIP program replaced the Aid to Dependent Children (ADC) program effective October 1, 1996. 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.

With regard to income from the Workforce Investment Act, PEM 500 states:

Workforce Investment Act (WIA).

Count WIA on-the-job training income as earnings.

Exceptions:

- Disregard OJT income received under the Summer Youth Employment and Training Program.
- Disregard OJT income if received by a person who is:
 - Under age 18.
 - Age 18 and living with someone providing care or supervision.
 - For **LIF only**, age 19 and a dependent child.

Exclude all other WIA payments as income.

Claimant is currently working at the [REDACTED] participating in a work experience activity. Claimant argues that this is not on-the-job training, and as such, should be excluded as income. The Department argues that this counts as on-the-job training, and therefore, must be counted as income under PEM 500. PEM 500 clearly states that only on-the-job training activity through WIA should be counted. Any other WIA payment must be excluded. Therefore,

in order to determine whether this income should be counted as income, we must first determine whether the activity the claimant participates in is considered “on-the-job training”.

20 CFR 663.700 gives us guidance as to what is considered “on-the-job training”:

(a) On-the-job training (OJT) is defined at WIA section 101(31). OJT is provided under a contract with an employer in the public, private non-profit, or private sector. Through the OJT contract, occupational training is provided for the WIA participant in exchange for the reimbursement of up to 50 percent of the wage rate to compensate for the employer’s extraordinary costs. (WIA sec. 101(31)(B).)

(b) The local program must not contract with an employer who has previously exhibited a pattern of failing to provide OJT participants with continued long-term employment with wages, benefits, and working conditions that are equal to those provided to regular employees who have worked a similar length of time and are doing the same type of work. (WIA sec. 195(4).)

(c) An OJT contract must be limited to the period of time required for a participant to become proficient in the occupation for which the training is being provided. In determining the appropriate length of the contract, consideration should be given to the skill requirements of the occupation, the academic and occupational skill level of the participant, prior work experience, and the participant’s individual employment plan. (WIA sec. 101(31)(C).)

Therefore, “on-the-job training” is defined, more generally, as occupational training in exchange for a reimbursement of up to 50% of the wage rate. This is opposed to a “work experience activity”, defined at 20 CFR 663.200:

(a) Intensive services are listed in WIA section 134(d)(3)(C). The list in the Act is not all-inclusive and other intensive services, such as out-of-area job search assistance, literacy activities related to basic workforce readiness, relocation assistance, internships, and work experience may be provided, based on an assessment or individual employment plan.

(b) For the purposes of paragraph (a) of this section, work experience is a planned, structured learning experience that takes place in a workplace for a limited period of time. Work experience may be paid or unpaid, as appropriate. A work experience workplace may be in the private for profit sector, the non-profit sector, or the public sector.

These are two separate activities. On-the-job training is characterized as specific job training that is reimbursed by the act up to 50%. WIA work experience activities are fully subsidized and may be paid or unpaid. Only on-the-job training income under the WIA is not exempt from income requirements; all other WIA payments must be excluded. Therefore, income from work experience activities must be excluded under PAM 500.

As her exhibit, claimant submitted a letter from her employer that stated she participated in a work experience activity. This letter stated that claimant's income was fully subsidized and for a limited period of time in a WIA activity. This is consistent with the definition of a WIA work experience activity. As such, this income cannot be counted under PEM 500, and the claimant is correct in her assertion that this income should not have been counted. The Department was in error when it maintained that this income should have been counted.

Thus, the Administrative Law Judge has reviewed the budgets and finds that the department improperly computed the claimant's gross income. The gross earned income from claimant's WIA income cannot be counted as income. PEM 500. The federal regulations at 7 CFR 273.10 provide standards for the amount of a household's benefits. The Department in compliance with the federal regulations has prepared issuance tables which are set forth at Program Reference Manual, Table 260. By not counting this income, claimant will likely be eligible to receive a higher allotment of benefits, both for FIP and FAP.

Therefore, the Administrative Law Judge must decide that the budgets as presented are in error. Claimant was correct when she maintained that her WIA income should not be counted. Therefore, the undersigned finds that the FAP and FIP allotment was computed incorrectly.

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 reduce claimant's FAP benefits to \$491 and remove claimant's FIP benefits was incorrect.

Accordingly, the Department's decision is REVERSED.

The Department is ORDERED to restore claimant's FAP and FIP benefits retroactive to the negative action date and recalculate claimant's FAP and FIP budgets without the WIA income.

/s/

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

Date Signed: September 3, 2009

Date Mailed: September 3, 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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