

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: 2009-24797
Issue No: 3002
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 9, 2009
Oakland County DHS

ADMINISTRATIVE LAW JUDGE: Tyra L. Wright

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 9, 2009. The Claimant personally appeared and testified. A services program manager represented the Department.

ISSUE

Did the Department properly compute the Claimant's Food Assistance Program benefits for June 2009?

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 is a FAP benefits recipient for a group size of one. Claimant had been receiving about \$200 in monthly FAP benefits prior to June 2009.

- (2) Claimant had been receiving unemployment compensation benefits. When his unemployment benefits stopped, his monthly FAP benefits increased to \$200. Then, in June 2009, Claimant obtained extended unemployment benefits. Claimant received \$362 weekly unemployment benefits that were paid bi-weekly in the amount of \$724.
- (3) As a result, the Department converted the bi-weekly unemployment income to a monthly income amount by multiplying it by 2.15, resulting in monthly unemployment income of \$1,556. The Department then included his monthly unemployment income in his June 2009 FAP budget. (Exhibit 2).
- (4) As a result of the extended unemployment benefits, Claimant's monthly FAP benefit allotment was reduced to \$16. (Exhibit 2).
- (5) Claimant disagreed on the grounds that the Department had improperly calculated his benefits by converting his bi-weekly unemployment benefits to a monthly income amount.
- (6) The Department received Claimant's hearing request on March 26, 2009. (Exhibit 1).
- (7) Claimant timely requested a hearing. The Department, however, failed to delete the negative action pending the outcome of this hearing.

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 (formerly known as the Family Independence Agency) 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).

Federal law requires that FAP recipients meet income eligibility standards to receive benefits:

Income and deductions.

(a) *Income eligibility standards.* Participation in the Program shall be limited to those households whose incomes are determined to be a substantial limiting factor in permitting them to obtain a more nutritious diet. Households which contain an elderly or disabled member shall meet the net income eligibility standards for the Food Stamp Program. Households which do not contain an elderly or disabled member shall meet both the net income eligibility standards and the gross income eligibility standards for the Food Stamp Program. Households which are categorically eligible as defined in §273.2(j)(2) or 273.2(j)(4) do not have to meet either the gross or net income eligibility standards. The net and gross income eligibility standards shall be based on the Federal income poverty levels established as provided in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)). (7 CFR 273.9)

UNEMPLOYMENT BENEFITS

All Programs except FTW

Unemployment benefits include:

- Unemployment compensation benefits (UB) available through the Michigan Unemployment Insurance Agency (UIA) and comparable agencies in other states, and
- Supplemental unemployment benefits (SUB pay) from an employer or other source.

Count the gross amount as unearned income.

FTW Only

Exclude as income.

Exception: Sometimes benefits are reduced because the person has earnings. In such cases, the reduced amount is the gross amount. See [“Returned Benefits”](#) about excluding amounts listed under

recoupment on the Unemployment Insurance Agency payment stub. (PEM 500, p. 36)

Standard Monthly Amount

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

Stable and Fluctuating Income

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 505, p.7)

Timely Hearing Request

All Programs

A hearing request is considered timely if it is received anywhere in the department:

- Within the pended negative action period.
- Within eleven days of the effective date of an immediate negative action (i.e., with adequate notice). When the 11th calendar day is a Saturday, Sunday, holiday, or other non-workday, the request is timely if received by the following workday.
- Prior to the effective date of an automatic MA or AMP termination.

The effective date on the DHS-1605 is the MA end date on CIMS (negative action code 095).

While waiting for the hearing decision, recipients must continue to receive the assistance authorized prior to the notice of negative action when the request was filed timely. Upon receipt of a timely hearing request, do one of the following that applies to the case.

- Delete the pending negative action.

- Reinstate program benefits to the former level for a hearing request filed because of an immediate negative action.

For **FAP only**, these actions apply **only** if the benefit period has **not** expired.

Exception #1: For **all programs**, do **not** restore benefits reduced or terminated due to a mass update required by state or federal law **unless** the issue contested is that the benefits were improperly computed.

Exception #2: For **All Programs**, do **not** restore program benefits when the AHR or, if none, the client specifically states in writing that continued assistance pending the hearing decision is **not** requested.

Exception #3: For **FAP only**, if an AHR or, if none, the client disputes the computation of supplemental benefits, issue the supplement as originally computed. (PAM 600, pg.17-18)

Under PEM 500, all income that is “NOT specifically excluded” must be considered in calculating FAP benefits. (PEM 500, pg.1). Unemployment compensation benefits are not excluded income. Moreover, the Department properly converted his bi-weekly unemployment income into a monthly income amount under PEM 505. Consequently, it is found that the Department properly calculated Claimant’s June 2009 FAP budget based on the information available to the Department at the time. The undersigned has reviewed the June 2009 FAP budget and finds it to be correct.

The Department, however, failed to delete the negative action after Claimant timely requested a hearing as required by PAM 600. Therefore, it is found that the Department must supplement his FAP benefits to reimburse Claimant for the benefits he would have received while awaiting the hearing.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department properly computed Claimant’s FAP benefits for June 2009.

Accordingly, the Department’s action is **AFFIRMED**.

Because the Department failed to delete the negative action pending the outcome of this hearing, the Department is ORDERED to reimburse Claimant the benefits he would have received pending the outcome of this hearing had the Department properly deleted the negative action after he timely requested a hearing.

/s/

Tyra L. Wright
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 08/05/09

Date Mailed: 08/06/09

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.

TW/dj

cc:

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