

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. 2009-5990
Issue No. 3003
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date:
September 21, 2009
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Colleen Lack

HEARING DECISION

This matter is before the undersigned Administrative Law Judge upon pursuant to MCL 400. 9; MCL 400.37 upon claimant's request for a hearing. After due notice a telephone hearing was held on September 21, 2009. The claimant appeared and testified. Denise Clora, ES, appeared on behalf of the department.

ISSUE

Did the department properly calculate claimant's monthly Food Assistance Program (FAP) allotment?

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 an ongoing recipient of FAP benefits in a household of three persons.
2. Claimant had obligations for shelter and utility expenses.
3. Claimant had income from unemployment benefits of \$278 bi-weekly.

4. In November 2008, the department discovered claimant was receiving child support payments for two children on a find and fix system report.
5. On November 7, 2008, the department re-calculated claimant's FAP budget to include the child support income and determined that claimant is entitled to a monthly FAP allotment of \$253, effective December 2008. (Department Exhibit 1, pgs. 1-2)
6. The Department issued a Notice of Case Action November 7, 2008, indicating claimant's FAP benefits would be cancelled effective November 19, 2009. (Department Exhibit 1, pg. 7)
7. Claimant requested a hearing on November 13, 2008, contesting the FAP determination. (Department Exhibit 1, pg. 8)
8. Claimant FAP benefits did not terminate November, 19, 2009, but were reduced in December 2008.

CONCLUSIONS OF LAW

The Food Assistance Program, 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), formally known as the Family Independence Agency, administers the FAP program pursuant to MCL 400.10, *et seq* and MAC R 400.3001-3015. Departmental policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM), and the Program Reference Manual (PRM).

The federal regulations define household income to include the gross amount of unearned income, such as unemployment compensation benefits. 7 CFR 273.9(b). Stable income received two weeks is multiplied by 2.15 to take into account fluctuations due to the number of scheduled

pays in a month. PEM 505. Under 7 CFR 273.9, as amended, \$135 is deducted from the gross income of FAP recipients in determining FAP grants. Under 7 CFR 273.9, deductions for excess shelter expenses are also made. PEM 554.

To budget income from child support, PEM 505 directs the department to use the average of child support payments received in the past three calendar months, unless changes are expected. If the past three months' child support is not a good indicator of future payments, calculate an expected monthly amount for the benefit month based on available information and discussion with the client. PEM 505.

In the present case, the department used the average of the past three months child support for each child. However, the amount of the child support payments claimant received in August, September and October 2008 varied significantly each month. For one child the payments were \$160.60, \$256.96, and \$439.41. The payments for the second child were \$69.40, \$111.04, and \$239.31. (Department Exhibit 1, pg. 2)

The averaged child support payment figures used by the department were \$285.66 and \$139.92. (Department Exhibit 1, pg. 2) However, claimant testified that in November 2008 she only received one child support payment of \$27.33 for one child and nothing for the other child. In December 2008, claimant testified she received two payments of \$184, one for each child.

Based upon the foregoing facts and relevant law, it is found that the claimant was not receiving the correct monthly FAP allotment. The child support payments varied too significantly for the average of the past three months payments to be a good indicator of future payments. Accordingly, the Department shall recalculate the claimant's FAP budget retroactive to December 2008.

DECISION AND ORDER

The ALJ, based upon the findings of fact and conclusions of law, decides that the averaged child support income figure used by the department in the FAP budget was not a good indicator of future payments and it is ORDERED that the Department's decision in this regard be and is hereby REVERSED.

Therefore it is ORDERED that the department re-determine FAP eligibility retroactive to December 2008 and award benefits to claimant, if appropriate, in accordance with this decision.

/s/ _____
Colleen Lack
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: September 23, 2009

Date Mailed: September 23, 2009

NOTICE: The law provides that within 30 days of receipt of the above Decision and Order the claimant may appeal it to the circuit court for the county in which he/she lives. Administrative Hearings, on its own motion, or on request of a party within 30 days of the receipt of this Decision and Order, may order a rehearing. Administrative Hearings will not order a rehearing on the agency's motion where the final decision or rehearing cannot be implemented within 90 days of the filing of the original hearing request.

CL/cv

cc:

[REDACTED]