

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: 2009-6811  
Issue No: [REDACTED]  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
March 4, 2009  
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Ivona Rairigh

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 March 4, 2009. Claimant personally appeared and testified.

ISSUE

Did the department correctly deny claimant's Food Assistance Program (FAP) application in October, 2008 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 applied for FAP on September 26, 2008 (Department's Exhibits #1-15).
2. Claimant's household consists of herself, her husband and her 16 year-old granddaughter.

3. Claimant receives \$ [REDACTED] per month in Social Security benefits and pays monthly medical insurance (Medicare) of \$ [REDACTED]. Claimant's husband receives [REDACTED] [REDACTED] benefits of \$ [REDACTED] 3 and deductions for federal taxes and Medicare premium are taken out these benefits (Department's Exhibits #17 and 18).

4. Department computed a FAP budget for a household of 3 budgeting total gross income of [REDACTED] per month. This budget showed that the monthly gross income of claimant's household of [REDACTED] exceeded the maximum income of [REDACTED] allowed for her size household.

5. On October 28, 2008, department sent the claimant a notice telling her that her FAP application has been denied due to total countable income exceeding the limit (Department's Exhibit #19). Claimant requested a hearing on November 24, 2008.

#### 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).

Departmental 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.

### **RAILROAD RETIREMENT BOARD BENEFITS**

#### **All Programs**

Current and former employees of railroads and related industries and their families can get the following types of benefits.

- . Disability
- . Retirement
- . Sickness
- . Strike
- . Survivors
- . Unemployment

The U.S. Railroad Retirement Board makes the payments.

Count the gross benefit amount as unearned income.

**Exception:** Exclude Medicare premium refunds as income and assets. Refunds are made because there is a delay of about 120 days between when Medical Services Administration initiates Medicare buy-in and a person's benefit check actually changes. See PAM 810 for more information. PEM, Item 500, pp. 25-26.

**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.

Claimant receives RSDI and her husband receives Railroad retirement benefits, and department budgeted these incomes correctly in accordance with departmental policy.

Claimant's granddaughter lives in her home and the claimant is a primary caretaker of this 16 year-old child, as she testified that the whereabouts of the child's father are unknown and the mother is incapable of taking care of her and provides no child support. Claimant did state in her hearing request that her income and the income of her husband should not count for her granddaughter. However, departmental policy does require that the claimant, her husband and her granddaughter be in the same FAP group, as it states:

**FOOD ASSISTANCE PROGRAM GROUP COMPOSITION**

**DEPARTMENT POLICY**

You must determine who is included in the Food Assistance Program (FAP) group prior to evaluating the nonfinancial and financial eligibility of everyone in the group.

To establish FAP group composition determine:

1. Who lives together.
2. The relationship(s) of the people who live together.
3. Whether the people living together purchase and prepare food together or separately, and

4. Whether the person(s) resides in an eligible living situation. (See “LIVING SITUATIONS” in this item.)

PEM, Item 212, p. 1.

## **RELATIONSHIPS**

The relationship(s) of the people who live together affects whether they must be included or excluded from the group. First determine if they **must** be included in the group. If they are **not** mandatory group members, then determine if they purchase and prepare food together or separately. PEM, Item 212, p. 1.

### **Spouses**

Spouses who are legally married and live together **must** be in the same group. PEM, Item 212, p. 1.

### **Primary Caretaker**

The **Primary Caretaker** is the person who is primarily responsible for the child’s day-to-day care and supervision in the home where the child sleeps more than half of the days in a calendar month, on average, in a twelve-month period. PEM, Item 212, p. 1.

### **Caretaker**

A caretaker is a related or unrelated person who provides care or supervision to a child(ren) **under 18** who lives with the caretaker but who is **not** a natural, step or adopted child. This policy does **not** apply to foster children (see below). A person acting as a parent and the child(ren) for whom he acts as a parent who live with him **must** be in the same group. PEM, Item 212, p. 1.

## **LIVING WITH**

Living with means sharing a home where family members usually sleep and share **any** common living quarters such as a kitchen, bathroom, bedroom or living room. Persons who share **only** an access area (e.g., entrance or hallway) or non-living area (e.g., laundry) are **not** considered living together.

See PEM 617 for policy regarding persons in other group living situations. PEM, Item 212, p. 2.

Claimant's household is classified as disabled. Departmental policy states:

**Disabled**

A person who receives one of the following:

- . A federal, state or local public disability retirement pension **and** the disability is considered permanent under the Social Security Act.
- . Medicaid, CIMS program codes O or P (which require a disability determination by MRT or Social Security Administration).
- . **Note:** Breast and Cervical Cancer Prevention and Treatment Program Medicaid cases are **not** considered disabled.
- . Railroad Retirement **is** eligible for Medicare or meets the Social Security disability criteria.

A person who received or has been certified and awaiting their initial payment for one of the following:

- . Social Security disability or blindness benefits.
- . Supplemental Security Income (SSI), based on disability or blindness, **even if** based on presumptive eligibility. PEM, Item 550, pp. 1-2, 7 CFR 271.2.

A Senior/Disabled/Veteran (SDV) FAP group is one which has an SDV member. PEM, Item 550. p. 1. SDV FAP groups are subject to different income guidelines than non SDV FAP groups. A non-categorically eligible SDV FAP group must have income below the net income limits, while a non-categorically eligible, non-SDV FAP group must have income below the gross and net income limits. PEM, Item 550, p. 1.

FAP groups are categorically eligible based on enhanced authorization for Domestic Violence Prevention Services. PEM, Item 213, p. 1. Such groups automatically meet asset, gross and 100% net income limits for food assistance. Claimant's household does not meet these eligibility criteria, and therefore must have income below the net income limits. Claimant's

