

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: 2009-16408
Issue No: 3003
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 12, 2009
Eaton County DHS

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

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 May 12, 2009. Claimant appeared and testified.

ISSUE

Did the Department of Human Services properly calculate the amount of Claimant's Food Assistance Program (FAP) benefits?

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 Food Assistance Program (FAP) benefits.
- (2) On February 28, 2009, an updated Food Assistance Program (FAP) financial eligibility budget was run by the department. Claimant was sent notice of the benefit amount determined by this budget.

- (3) On March 4, 2009, claimant submitted a request for 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 (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).

Claimant's dispute with the department's financial eligibility budget centers on the method used to establish her groups prospective income. Department policy provides the following guidance for caseworkers. The department's policies are available on the internet through the department's website.

BEM 505 PROSPECTIVE BUDGETING/INCOME CHANGE PROCESSING

DEPARTMENT PHILOSOPHY

A group's benefits for a month are based, in part, on a prospective income determination. A "best estimate" of income expected to be received by the group during a specific month is determined and used in the budget computation.

Get input from the client whenever possible to establish this "best estimate" amount. The client's understanding of how income is estimated reinforces reporting requirements and makes the client an active partner in the financial determination process.

DEPARTMENT POLICY

FIP, SDA, CDC and FAP

A group's financial eligibility and monthly benefit amount are determined using:

- Actual income (income that was already received), and/or
- Prospected income amounts (not received but expected).

Only **countable** income is included in the determination (see BEM 500).

Each source of income is converted to a **standard monthly amount**, unless a full month's income will not be received (see Standard Monthly Amount in this item).

DEFINITIONS

Benefit month: The month an assistance benefit payment covers. For CDC, benefit month is the month in which the pay period ends.

Available income: Income actually received or reasonably anticipated.

Reasonably anticipated means that the amount of income can be estimated and the date of receipt is known. Available income includes garnisheed amounts and income received jointly. See BEM 500.

Stable income: Income received on a regular schedule that does not vary from check to check based on pay schedules or hours worked.

Examples: a job in which the paycheck amounts don't vary and are paid on a regular schedule; or RSDI or SSI.

Fluctuating income: Income received on a regular schedule but that varies from check to check, such as a waitress' income whose hours vary each week.

Contractual/Single Payment Income:

Income that is received in one month(s) that is intended to cover more than one month. For example, a teacher on a yearly contract who is paid over the nine month school year; or the single payment distributed quarterly from casino profits.

Irregular income: Income that is not received on a regular schedule or that is received unpredictably, such as a person self-employed doing snow removal.

DETERMINING BUDGETABLE INCOME

FIP, SDA, CDC, FAP

Determine budgetable income using countable, available income for the benefit month being processed.

Current and Future Months

Prospect income using a “best estimate” of income expected to be received during the month (or already received). Seek input from the client to establish an estimate, whenever possible.

To prospect income, you will need to know:

- The type of income and the frequency it is received (e.g., weekly).
- The day(s) of the week paid.
- The date(s) paid, and
- The gross income amount received or expected to be received on each pay date.

BUDGETING INCOME

Use the following guidelines to budget income:

Non-Child Support Income

Using Past Income

Use past income to prospect income for the future unless changes are expected:

- Use income from the **past 30 days** if it appears to accurately reflect what is expected to be received in the benefit month.

Note: The 30-day period used can begin up to 30 days before the interview date or the date the information was requested.

Exception: For FAP only, when processing a semi-annual contact, the 30-day period can begin up to 30 days before the day the DHS-1046, Semi-Annual Contact Report, is received by the client or the date a budget is completed. Any 30-day period that best reflects the client’s prospective income within these guidelines can be used.

Discard a pay from the past 30 days if it is unusual and does not reflect the normal, expected pay amounts. Document which pay is

being discarded and why. For example, the client worked overtime for one week and it is not expected to recur.

Example: Mary works at Walmart and is paid every two weeks. Her income fluctuates but she is scheduled to work approximately 20 hours per week. In talking with Mary, you agree that the last 30 days income is an accurate reflection of future income. Using the two paychecks received in the last 30 days (\$210.00 and \$229.60), you determine the budgetable monthly income amount is \$472.57 (\$210.00 plus \$229.60 divided by 2 times 2.15).

- Use income from the **past 60 or 90 days** for fluctuating or irregular income, if:
 - The past 30 days is not a good indicator of future income, and
 - The fluctuations of income during the past 60 or 90 days appear to accurately reflect the income that is expected to be received in the benefit month.

LOA2 will compute the average monthly income (and convert weekly and every other week amounts) based on the amounts and the number of months entered.

Note: The 60 or 90-day period used can begin up to 60 or 90 days before the interview date or the date the information was requested.

The Food Assistance Program (FAP) financial eligibility budget dated February 28, 2009, was calculated using claimant's pay stubs from 1/23/09, 2/6/09, and 2/20/09 and her husband's income between 1/23/09 and 2/20/09. During the hearing the department representative stated there was some extrapolation used to determine the amount of one week's pay of claimant's husband and that extrapolation was not done correctly. Claimant asserts that the department should use a 60 or 90 day period of past income to calculate the benefit group's prospective income. The record contains past income data since November 1, 2008, for claimant and past income data since August 1, 2008, for her husband. There are a limited number of actual pay check stubs in this evidentiary record and the accuracy of all the past income data cannot be

confirmed. Review of that past income data indicates that following claimant's assertion would result in a smaller prospected monthly income than the department calculated.

While claimant cannot be faulted for wanting to optimize her eligibility for benefits, the department's policy was designed toward the goal of developing the most accurate average income for use in determining the amount of benefits issued. It is exactly for that reason that the policy provides flexibility to use different periods of past income for prospecting future income. While the evidence does support claimant's assertion that her income is fluctuating, none of the income evidence shows that using a 60 or 90 day period of past income will provide a more accurate average of her income. No theoretical fault is found with the department's calculation of claimant's prospective income.

However, after spending considerably more time and effort than normal for a Food Assistance Program (FAP) case dispute, I am unable to find any calculation or calculus which results in the earned income amount in the eligibility budget (Department Exhibit #7) The department stated there was an incorrect extrapolation made in computing one of the husband's weekly income amounts. Because the evidence in this record is insufficient to determine a correct earned income amount for the Food Assistance Program (FAP) financial eligibility budget dated February 28, 2009, I must order that the budget be recalculated.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department of Human Services DID NOT properly calculate the amount of claimant's Food Assistance Program (FAP) benefits.

It is ORDERED that the actions of the Department of Human Services, in this matter, are REVERSED.

It is further ORDERED that the Food Assistance Program (FAP) financial eligibility budget be recalculated.

/s/ _____
Gary F. Heisler
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: May 18, 2009

Date Mailed: May 19, 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.

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