

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: 2009-2077
Issue No: 3002, 3003, 5006
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 14, 2009
Ottawa County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne L. Keegstra

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 April 14, 2009. The claimant personally appeared and provided testimony.

ISSUE

Did the department properly deny the claimant's application for Food Assistance Program (FAP) benefits and for State Emergency Relief (SER) due to excess income in September, 2008?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. The claimant applied for FAP benefits and SER on September 22, 2008 (Department Exhibit #5, 10).

2. On both applications the claimant indicated that she worked 40 hours per week at a rate of [REDACTED] per hour (Department Exhibit #3, 8).

3. The claimant also reported that she received child support (Department Exhibit #4, 8).

4. The department budgeted the claimant's child support income by averaging the three previous months (June, July and August) to get an average amount to budget. This amounted to a budgetable total of [REDACTED] of unearned income (Department Exhibit #11, 12).

5. The department budgeted the claimant's earned income by taking her average week of pay (40 hours multiplied by [REDACTED] per hour) and multiplying that number by 4.3, to take into account the fluctuations in the number of pays for each month. This budgetable total was [REDACTED] (Department Exhibit #12).

6. The department entered the shelter expenses of [REDACTED] for rent and [REDACTED] for heat and utility (Department Exhibit #12).

7. The claimant was also given a dependent care expense of [REDACTED] (Department Exhibit #12).

8. When these numbers were entered into the formula, the claimant had excess income for FAP benefits (Department Exhibit #12).

9. The department also computed the claimant's SER budget. The claimant's earned and unearned income produced a copayment amount for any SER benefit that was [REDACTED] which was greater than the SER need (Department Exhibit #15).

10. The department denied the claimant's application for FAP on September 25, 2008, due to excess income (Department Exhibit #1).

11. The department denied the claimant's SER application on September 25, 2008, because the total copayment amount equaled or exceeded the SER need (Department Exhibit #2).

12. The claimant turned in her request for hearing on October 7, 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).

The State Emergency Relief (SER) program is established by 2004 PA 344. The SER program is administered pursuant to MCL 400.10, *et seq.*, and by final administrative rules filed with the Secretary of State on October 28, 1993. MAC R 400.7001-400.7049. Department of Human Services (DHS or department) policies are found in the State Emergency Relief Manual (SER).

Department policy states:

DEPARTMENT POLICY

State Emergency Relief (SER) prevents serious harm to individuals and families. SER assists applicants with safe, decent, affordable housing and other essential needs when an emergency situation arises. ERM, Item 101, p. 1.

Requirements

Residence in the State of Michigan is not required. SER serves all persons physically present in Michigan. In addition, SER applicants must:

- . Complete the application process
- . Meet financial and non-financial requirements
- . Have an emergency which threatens health or safety and can be resolved through issuance of SER
- . Take action within their ability to help themselves, i.e., obtain potential resources and/or apply for assistance
- . Not have caused the emergency (ERM, 204, Client-Caused Emergency)
- . Cooperate in providing information about income, assets, living arrangements, and other persons living in the home

Deny SER services for applicants who fail to meet any of the above requirements. ERM, Item 101, p. 1.

ELIGIBILITY DETERMINATION

LOA2 State Emergency Relief Budget

Complete an LOA2 SER budget for each request/application. Use it to calculate payment maximums, required payments, income and asset eligibility, etc. and to certify eligibility or ineligibility. ERM, Item 103, p. 2.

Approval

Certain conditions must be met before SER can be issued to help individuals and families whose health and safety are threatened:

- . Prior written or oral approval must be given by an authorized department staff person before SER issuance. Do not issue SER to reimburse expenses incurred or paid without prior department approval.
- . The SER payment must resolve the emergency.
- . The group must meet all applicable policy requirements for the SER service. ERM, Item 103, p. 2.

DHS-1419, Decision Notice

Inform all SER applicants in writing of the decision made on their application. Mail or give the DHS-1419, Decision Notice, to the applicant.

If the SER group meets all eligibility criteria but has an income or asset co-payment or shortfall or contribution, SER eligibility may be approved on SIMS, but do not issue payment until the client provides proof that the shortfall or contribution, and/or co-payment has been made.

Verification of payment must be made within the 30-day authorization period or no SER payment will be made and the client will have to reapply.

If the co-payment, shortfall, contribution or combination exceeds the need, the application can be denied. ERM, Item 103, p. 3.

COUNTABLE INCOME

Verify and budget all non-excluded gross income the SER group expects to receive during the budget computation period. **Do not prorate income.**

Unearned Income Examples:

- . FIP and SDA
- . Social Security benefits (RSDI/SSI). Use the net amount received.

Note: Do not count reimbursement of Medicare premiums.

- . SSI State Supplemental Payments. Refer to Reference Schedules Manual (RFS), Item 106, State SSI Payment Payroll Deadline Schedule.

Note: Budget the entire \$42 amount if it is expected to be received in the countable income period. (Do not budget \$14 per month as a prorated amount.)

- . Alimony, child support and child support participation payments
- . VA benefits
- . Lump sum payments of accumulated monthly benefits

- . Payments from sick and accident insurance plans
- . Pensions and retirement benefits
- . UCB (Unemployment Compensation Benefits)
- . Worker's Compensation
- . Strike Benefits
- . Income received from the sale of property
- . Military allotments
- . Investment income, such as dividends and interest
- . Income from annuities, bonds, stocks and trusts

Earned Income Examples:

- . Earnings from work as an employee (wages, salary, college work-study, commissions, tips)
- . Earnings from self-employment
- . Training allowances paid to persons enrolled in sheltered workshops
- . Rental income
- . Chore services payments. ERM, Item 206, pp. 1-2.

Income/Asset Co-payment

Available income means net income in excess of the SER need standard (see Exhibit 1). This is the income co-payment.

Cash assets in excess of \$50 in the asset co-payment.

Add the income and asset co-payments together to determine the SER group's total co-payment. ERM, Item 208, p. 1.

Co-payment Process

The co-payment is the amount the SER group must pay. Deduct any co-payments from the cost of resolving the emergency.

Example: The applicant has an electric shut-off for \$100. The FY cap for electricity is \$450. The asset co-payment is \$15 and the income co-payment is \$100. Subtract the total \$115 co-payment from the \$100 need. SER is denied.

Example: The applicant has an electric shut-off for \$400. The FY cap for this service is \$450. The asset co-payment is \$15 and the income co-payment is \$100. Subtract the total \$115 co-payment from \$400. The available SER payment in this case is \$285. The \$285 payment may be made once it is verified that the client's \$115 has been paid. ERM, Item 208, p. 1.

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 PEM 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). PEM, Item 505, p. 1.

BUDGETING INCOME

Use the following guidelines to budget income.

Child Support Income

Past 3 Months

- . Use the average of child support payments received in the past 3 calendar months unless changes are expected. Include the current month if all payments expected for the month have been received. Do **not** include amounts that are unusual and not expected to continue.

Note: The 3 month period used can begin up to 3 months before the interview date or the date the information was requested.

If payment for the past 3 months vary, discuss the payment pattern from the past with the client. Clarify whether the pattern is expected to continue, or if there are known changes. If the irregular pattern is expected to continue, then use the average of these 3 months. If there are known changes that will affect the amount of the payments for the future, then do **not** use the past 3 months to project. **Document the discussion with the client and how you decided on the amount to budget.**

One Month Projection

- . If the past 3 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, Item 505, pp. 3-4.

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.

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.

- . 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.

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. PEM, Item 505, pp. 5-6.

Standard Monthly Amount

Stable and Fluctuating Income

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

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, Item 505, p. 7.

SHELTER EXPENSES

Allow a shelter expense when the FAP group has a shelter expense or contributes to the shelter expense. Do **not** prorate the shelter expense even if the expense is shared. Shelter expenses are allowed when billed. The expenses do **not** have to be paid to be allowed. PEM, Item 554, p. 9.

MANDATORY HEAT AND UTILITY STANDARD

Heat Separate from Housing Costs

A FAP group which has a heat expense or contributes to the heat separate from rent, mortgage or condominium /maintenance payments, must use the Heat and Utility Standard. This standard covers all heat and utility costs except **actual utility expenses, i.e. installation fees**, etc. (See Actual Utilities in this item.) Do **not** prorate the Heat and Utility Standard even if the heat expense is shared.

FAP groups that qualify for the Heat and Utility Standard **do not** receive any other individual utility standards. PEM, Item 554, p. 11.

The claimant testified that the numbers the department budgeted for her child support income and her employment income were correct. Claimant also testified that the department used the proper expenses for her rent and the utility standard. PEM 554. This Administrative Law Judge does find that the department followed policy and properly budgeted the amounts in both the FAP and SER budgets.

Department policy for FAP requires the department to take income that is earned more frequently than monthly and multiply the weekly average by 4.3 to account for fluctuations in the number of pays in each month. PEM 505. The department did take the claimant's average weekly income [REDACTED] and multiply it by 4.3, which equaled [REDACTED] the amount of earned income budgeted in the claimant's FAP case. The department also properly averaged the claimant's child support income by taking the average of the previous three months [REDACTED] PEM 505. Thus, the department properly computed the claimant's FAP budget and found the claimant has excess income.

Department policy for SER requires the department to take the earned (employment wages) and unearned income (child support) and enter the numbers into the SER budget. ERM 206. The earned income entered was the monthly amount of [REDACTED] as there is no policy instruction to multiply it by 4.3. The child support remained averaged over the three months and equaled [REDACTED]. Once these numbers were entered into the federal formula, the claimant had a income copayment of [REDACTED]. According to department policy, if the income and asset copayment equals or exceeds the SER need, the application must be denied. ERM 208. In this case, the budget shows the claimant had a total copayment of [REDACTED] which was more than the SER need, thus the department properly denied the SER application.

It is noted that, while the numbers were correct when the department completed the budgets in question, the claimant testified that her situation has changed substantially. The claimant testified that she has lost her job and has exhausted her unemployment benefits. This Administrative Law Judge explained to the claimant that this will substantially alter her budgets and asked if she had reapplied for benefits. The claimant reported that she had re-applied for SER in March, 2009 and that she was approved.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department properly computed the claimant's budgets for the FAP and SER application in September, 2008. The department properly determined that the claimant had excess income for the FAP program and that the SER copayment was greater than the SER need.

Accordingly, the department's decision is AFFIRMED. SO ORDERED.

/s/ _____
Suzanne L. Keegstra
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: April 29, 2009

Date Mailed: April 30, 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.

SLK [REDACTED]

cc: [REDACTED]