

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: 2009-23408
Issue No: 3015; 3026
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 24, 2009
Menominee 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 June 24, 2009. Claimant personally appeared and testified.

ISSUE

Did the department correctly budget self-employment income of claimant's household, resulting in excess income for 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 applied for FAP benefits on April 29, 2009, was interviewed in person, and given a Verification Checklist, DHS-3503, requesting her 2008 taxes showing her household's (claimant and her husband) self-employment income.

2. Claimant subsequently provided her 2008 tax return. On May 2, 2009, department computed a FAP budget counting claimant's day care provider income, her husband's self-employment income, and her husband's RSDI.

3. This budget resulted in finding of excess income for FAP. On May 4, 2009, department sent the claimant a notice denying her FAP application. Claimant requested a hearing on May 11, 2009.

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).

Department's 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.

Exception: The amount of self-employment income before any deductions is called **total proceeds**. The **gross** amount of self-employment income means the amount after deducting allowable expenses from total proceeds, but before any other deductions. PEM, Item 500, p. 1.

Income remaining after applying the policy in this item is called **countable**.

Count all income that is NOT specifically excluded. PEM, Item 500, p. 1.

EMPLOYMENT INCOME

All Programs

Self-Employment

A person who runs his own business is self-employed. This includes selling goods, farming, direct services (e.g., child care or personal care services), and operating a facility that provides services (e.g., adult foster care home, room and board).

A person who provides child care in his/her home is self-employed. **Note:** A person who provides care at the child's home (e.g., day care aide) is an employee of the child's parent/substitute parent. He/she is not self-employed.

Countable Self-Employment Income

Countable earnings from self-employment equal the total proceeds **minus** allowable expenses of producing the income. If allowable expenses exceed the total proceeds, the amount of the loss cannot offset any other income **except** for farm loss amounts. See "Farming Expenses" below. PEM, Item 500, pp. 12-13.

Allowable expenses are the **higher** of:

- . 25% of the total proceeds, **or**
- . actual expenses if the client chooses to claim and verify the expenses. PEM, Item 500, p. 13.

Allowable Self-Employment Expenses

Allow expenses include (also see “Room and Board”):

- . Identifiable expenses of labor, stock, raw material, seed, fertilizer, etc. PEM, Item 500, p. 13.
- . Interest and principal on loans for equipment, real estate or income-producing property. PEM, Item 500, p. 13.
- . Insurance premiums on loans for equipment, real estate and other income-producing property. PEM, Item 500, p. 13.
- . Taxes paid on income-producing property. PEM, Item 500, p. 13.
- . Transportation costs while on the job (example: fuel), but NOT routine transportation to and from work. PEM, Item 500, p. 14.
- . Purchase of capital equipment. PEM, Item 500, p. 14.
- . A child care provider’s cost of meals for children. Do NOT allow costs for the provider’s own children. PEM, Item 500, p. 14.
- . Any other identifiable expense of producing self-employment income **except** those listed below. PEM, Item 500, p. 14.

Do NOT deduct the following from self-employment income:

- . Depreciation on equipment, real estate or other capital investments
- . A net loss from a previous period
- . Federal, state and local income taxes
- . Personal entertainment or other personal business expenses
- . Money set aside for retirement. PEM, Item 500, p. 14.

Department took into account claimant's self-employment income from being a day care provider and her husband's self-employment income from a company he runs with their son. Claimant testified that her day care provider income stopped in April, 2009. While this income had to be budgeted for April, 2009 FAP determination, department was required by policy to calculate a budget for May, 2009 without such income. PEM, Item 505.

Department used claimant's 2008 tax return to arrive at yearly income her husband received for 2008 and project such income for 2009. Claimant disputes the amounts of income department used from her tax return. Furthermore, claimant states that her husband's business income has significantly dropped this year. Claimant also states that she provided verification of self-employment income producing expenses to the department, however FAP budget shows that the department used 25% for expenses figure noting such expenses were not verified.

Claimant's caseworker states that the self-employment income and expenses were computed by her manager who is not available for the hearing. No documentation has been provided for this hearing showing how the manager arrived at the figures used in computing the FAP budget. Claimant's caseworker is in agreement that claimant's day care provider income should have been removed and a budget done for May, 2009 without such income, and that the claimant should provide verification of her husband's income and expenses for 2009 so a FAP budget can be calculated on such amounts. If self-employment income of claimant's husband has indeed been significantly reduced in year 2009, it would be in accordance with department's policy to accept 2009 income and expense verifications when computing the FAP budget. PEM, Item 505. During the hearing this Administrative Law Judge also cited to the claimant policy specifications regarding allowable self-employment expenses, as quoted above. Claimant stated she would provide additional verification of self-employment income and expenses to the department.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department incorrectly computed in April, 2009 the self-employment income of claimant's household.

Accordingly, department's action is REVERSED. Department shall:

1. Issue the claimant another Verification Checklist, DHS-3503, (if already not done so), asking for documentation/verification of self-employment income and expenses from January 1, 2009 to present.
2. If the claimant provides requested information, compute a FAP budget for April and May, 2009, removing claimant's day care provider income for May, 2009 budget.
3. Department shall specifically show how monthly self-employment income and expenses were derived at, i.e. total proceeds minus allowable expenses of producing the income. This can be done by listing sources of income and amounts for each month along with named expenses and amounts.
4. Notify the claimant in writing of this new FAP determination. Claimant may request a hearing if in disagreement with department's determination.

SO ORDERED.

/s/ _____
Ivona Rairigh
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: June 25, 2009

Date Mailed: June 26, 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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