

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: 2009-27519
Issue No: 3003
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 3, 2009
Oakland County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing. After due notice, a telephone hearing was conducted from Detroit, Michigan on August 3, 2009. The Claimant appeared and testified. Claimant was represented by [REDACTED] of [REDACTED]. Jenine Overby, Assistant Payment Specialist appeared on behalf of the Department.

ISSUE

Whether the Claimant's hearing request regarding Food Assistance Program ("FAP") benefits was timely; and

Whether the Department properly calculated Claimant's FAP benefits based on self employment income.

FINDINGS OF FACT

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

1. Claimant was an active FAP recipient up for annual review in January of 2009.

2. The Department request verification of all household income by tax records only due 2/3/09. (Exhibit 1, p. 1).
3. Claimant turned in an itemized list of income/expenditures. Claimant testified that she was never told that this was insufficient.
4. The Department issued a denial of benefits on 2/17/09 indicating that Claimant's FAP benefits would end on 2/27/09 as Claimant did not turn in her tax returns. (Exhibit 1, p. 2).
5. Claimant testified that she never received a copy of denial notice.
6. Claimant testified that she called the department and left messages trying to find out what was going on with her case. However, she did not receive any return phone calls.
7. Claimant further testified that she first received a call back on May 29, 2009.
8. Claimant turned in a copy of the 2008 tax returns along with several receipts verifying expenses for the past six months. (Exhibits, 2-3).
9. The Department indicated that Claimant had self employment income in the amount of \$102,000 in 2008 (Exhibit 2, p. 2).
10. A review of the 2008 tax returns indicates that the self employment income was actually \$36,800.00. (Exhibit 3, p. 7, 1040, Schedule C).
11. Claimant filed a request for a hearing in this matter on June 10, 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 (formerly known as the Family Independence Agency) 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).

A. Timeliness of Hearing Request

Requests for a hearing must be made in writing and signed by the Claimant or his authorized representative. (PAM 600, p. 2). A claimant has 90 calendar days from the date of the written notice of case action to request a hearing. The request must be received anywhere in DHS within the 90 days. (PAM 600, p. 4). The proper mailing and addressing of a letter creates a presumption of receipt. That presumption may be rebutted by evidence. *Stacey v Sankovich*, 19 Mich. App. 638 (1969); *Good v Detroit Automobile Inter-Insurance Exchange*, 67 Mich. App. 270 (1976).

In the subject case, the Claimant testified credibly that she was trying to reach the Department to discuss the status of her claim without any return phone call until 5/29/09. Assuming that Claimant did not receive the notice of denial, the May 29, 2009 is the first day that Claimant would have been aware of the status of her denial. At this point, the 90 days was already past. The Administrative Law Judge finds that Claimant's testimony rebuts the presumption of receipt of the notice of denial.

Accordingly, since Claimant never received the notice of denial, her hearing request is considered timely and the merits of the case will be discussed.

B. Self Employment Income.

Countable income from self-employment equals 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. PEM 500, pp. 13-14. Allowable expenses are the

highest of 25% of the total proceeds, or actual expenses if the client chooses to claim and verify the expenses. PEM 500, p. 14.

Allowable expenses include:

- Identifiable expenses of labor, stock, raw material, seed, fertilizer, etc.
- Interest and principal on loans for equipment, real estate or income-producing property.
- Insurance premiums on loans for equipment, real estate and other income-producing property.
- Taxes paid on income-producing property.
- Transportation costs while on the job (example: fuel).
- Purchase of capital equipment.
- A child care provider's cost of meals for children.
- Any other identifiable expense of producing self-employment income except those listed below.

The following shall not be deducted 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 500, p. 14. Verification for self-employment income can be in the form of business receipts, accounting or other business records, or Income tax return. PEM 500, p. 42.

In the subject case, Claimant submitted receipts and then was unaware of the subsequent denial for failure to turn in the income tax return. As Claimant has shown good cause that she did not receive the denial notice, it follows that Claimant would also not have known that income tax returns were needed by the Department to calculate benefits. Accordingly, it is found that Claimant's tax returns were timely submitted as well. As shown by the IRS 1040, Schedule C,

Claimant's self employment gross receipt or sales were \$36,800.00, not \$102,000 as initially determined by the Department. As a result, the Department should have taken deductions, per policy stated above, from the \$36,800 in order to determine Claimant's self employment income.

It should be noted that the IRS instructions for Form 1040, Schedule C allow for a total mileage reduction for vehicles used in the course of business. This is different from the allowable transportation costs allowed by the Department which includes only actual costs such as fuel. Therefore, a full scale adoption of the IRS deductions cannot be applied to the FAP deductions.

It should also be noted that PEM 500 requires verification in the form of business receipts, accounting or other business records, or income tax return. Handwritten logs do not necessarily qualify as business receipts or records which may be why the Department required an income tax return.

Based upon the foregoing facts and relevant law, it is found that the Department's determination is REVERSED.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the Claimant filed a timely hearing request for the Department's determination to reduce FAP benefits.

Furthermore, the Administrative Law Judge finds that the Department's determination to reduce FAP benefits based on Claimant's self employment income incorrectly relied on the wrong amount for gross receipts on the business.

Accordingly, it is ORDERED:

1. The Department's determination to deny Claimant FAP benefits effective 2/27/09 is REVERSED.

2. The Department shall recalculate Claimant's FAP benefits utilizing self employment gross income/receipts of \$36,800 and applying applicable deductions per PEM 500.
3. The Department shall supplement the Claimant for any lost benefits she was otherwise entitled to receive

/s/ _____
Jeanne M. VanderHeide
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 08/31/09

Date Mailed: 08/31/09

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.

JV/dj

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