

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: 2009-29511
Issue No: 3002; 3003
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 11, 2009
Washtenaw County DHS

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

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 August 11, 2009.

ISSUE

Was the claimant's FAP allotment computed and allocated correctly?

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 receiving a Food Assistance Program (FAP) allotment budget in Washtenaw County.
- (2) On 5-30-09, claimant's caseworker inquired as to a payment being posted on her bank statement, which showed that \$1,667 was being deposited monthly in claimant's account.

(3) Claimant responded that this was income that was intended to be a mortgage payment per court order, from a decree of divorce.

(4) This divorce decree ordered claimant's spouse pay spousal support directly to the claimant.

(5) This amount was intended so that claimant could pay her mortgage payment.

(6) However, there is no prohibition on claimant from using that money for any other purpose, besides the fact that claimant would not then be able to pay her mortgage.

(7) The Department considered this money to be spousal support, countable under PEM 500.

(8) Claimant's gross income was then considered to have exceeded the gross income limit, and claimant was ruled ineligible for FAP benefits.

(9) Claimant filed for hearing on 7-7-09, alleging that DHS incorrectly computed her budget, and therefore, allocated the wrong amount of FAP benefits.

(10) Claimant further argued that the payment in question was not spousal support, but rather, a direct third party payment of claimant's mortgage payment as ordered by the court.

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).

When determining eligibility for FAP benefits, the household's total income must be evaluated. All earned and unearned income of each household member must be included unless specifically excluded. PEM, Item 500. A standard deduction from income of \$135 is allowed for each household. Certain non-reimbursable medical expenses above \$35 a month may be deducted for senior/disabled/veteran group members. Another deduction from income is provided if monthly shelter costs are in excess of 50% of the household's income after all of the other deductions have been allowed, up to a maximum of \$300 for non-senior/disabled/veteran households. PEM, Items 500 and 554; RFT 255; 7 CFR 273.2.

With regard to the payment in question, the undersigned disagrees with the claimant's contention that the payment is not countable income. PEM 500 states, with regard to spousal support:

Spouse support is a payment to a spouse or former spouse because of a legally enforceable obligation for financial support. It includes maintenance and alimony payments.

Count the gross amount of spouse support received as unearned income

However, any portion of a payment that a court order or other legally binding agreement requires **to be sent directly to a person's creditor or service supplier** is excluded from countable income. PEM 500.

The payment in question is not a direct payment to claimant's mortgage provider. It is instead, directly paid to the claimant, who then pays the mortgage provider. While the undersigned acknowledges that the payment was put in place for the purpose of paying the mortgage, the form the payment takes here matters, at least according to the policy in PEM 500. PEM 500 states directly that the payment cannot ever be in the claimant's hands—it must go directly to a provider. This is not the current situation.

The Administrative Law Judge can only decide if the Department correctly applied policy. In the current case, there is no room for interpretation. The policy states directly that a payment such as is contemplated here must be counted as income.

There are other flaws in the claimant's argument. Claimant could, if she wished, use that payment for other things, including the purchasing of food. While this would negatively impact on claimant's shelter obligations, the fact remains that there is no legal order forcing claimant to use that payment specifically for the mortgage.

Furthermore, the divorce decree and other subsequent decrees specifically refer to the payment in question as "spousal support". It is not a court ordered mortgage payment, or a payment-in-kind. It is spousal support. PEM 500 states that spousal support must be considered unearned income, which is countable income. Therefore, the Department was correct in counting this income with regard to the claimant's FAP budget.

The Administrative Law Judge has reviewed the FAP budget and finds that the department properly computed the claimant's gross income. The gross unearned income benefit amount must be counted as unearned income, which is \$2344 in the current case, after counting the total member group's RSDI benefits of \$677 monthly, and the spousal support income of \$1667. PEM 500. These amounts were verified by the claimant herself and by Department Exhibits 5 and 13. The federal regulations at 7 CFR 273.10 provide standards for the amount of a household's benefits. The department in compliance with the federal regulations has prepared issuance tables which are set forth at Program Reference Manual, Table 260. The issuance table provides that a household with household size and net income of the claimant is not eligible for an FAP allotment. The Administrative Law Judge has reviewed the budget and found no errors. Claimant was unable to point out specifically what parts of the budget she felt were in error. Therefore, the undersigned finds that the FAP allotment was computed correctly.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department's decision to cut off the claimant's FAP allotment was correct.

Accordingly, the Department's decision is AFFIRMED.

/s/

Robert J. Chavez
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: September 1, 2009

Date Mailed: September 2, 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.

RJC/cv

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