

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: 2009-30845
Issue No: 3015-6019
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 12, 2009
Oakland County DHS

ADMINISTRATIVE LAW JUDGE: Jonathan W. Owens

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 October 12, 2009. Claimant appeared and testified. The Claimant's husband was also present and acted as her representative.

Following the hearing after the record had been closed the Claimant's attorney (husband) attempted to submit additional documents for review. These documents will not be included as part of this decision as they were provided outside the court hearing and without an opportunity for the Department to object.

ISSUE

Did the Department properly determine Claimant's income for Food Assistance Program (FAP) and Child Daycare (CDC) program benefits?

FINDINGS OF FACT

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

1. On June 4, 2008 the Claimant applied for MA, FAP and CDC benefits.
2. On August 13, 2008 Claimant filed a hearing request to protest the Department's failure to provide requested benefits.
3. On March 12, 2009 a hearing was held during which a settlement was reached whereby the Department agreed to re-open MA for Claimant based upon pregnancy. Further, the Department agreed to initiate reconsideration of Claimant's June 4, 2008 application for FAP and CDC benefits.
4. On March 25, 2009 the Department completed budgets for both MA and CDC and determined the Claimant was eligible for FAP benefits but had excess income for CDC.
5. On May 20, 2009 the Claimant requested a hearing regarding the calculation of income for CDC and FAP program budgets.
6. On May 29, 2009 a hearing settlement notice was issued from the Administrative Law Judge who held the hearing on March 12, 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) 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 Child Development and Care program is established by Titles IVA, IVE and XX of the Social Security Act, the Child Care and Development Block Grant of 1990, and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The program is implemented by Title 45 of the Code of Federal Regulations, Parts 98 and 99. The Department of Human Services (formerly known as the Family Independence Agency) provides services to adults and children pursuant to MCL 400.14(1) and MAC R 400.5001-5015. Department policies are contained in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

In the present case Claimant disputes the amount of income used for both his FAP and CDC budgets. The Department agreed at a hearing on held on March 12, 2009 to review and reconsider the Claimant's application for benefits. The Department stated they determined on March 25, 2009 that they didn't have adequate verification of business expenses in order to use the expenses provided by the Claimant. Instead of requesting additional verification of these expenses the Department simply allowed a 25% deduction off the gross income of the Claimant's business. The Claimant argues that he had provided all documentation requested.

Relevant Policy PEM 500, pg12-14:

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 child care in 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.

Rental income is also considered self-employment for income budgeting purposes. See **"RENTAL INCOME"** in this item for determining countable income and allowable expenses for rental income.

Self-Employed or an Employee?

It can be difficult to determine if someone is self-employed or is an employee of someone else. The guidelines below are provided to help you decide. These are usually indicators that someone is self-employed:

- The person sets his/her own hours.
- The person provides his/her own tools used on the job.
- The person is responsible for the service being provided and for the methods used to provide the service.
- The person collects payment for the services provided from the person paying for it.

Example 1: Joe has a contract with the local hospital to provide snow removal services. He drives his own snow removal vehicle and pays for his own gas. The hospital pays him directly based on the number of times his services are used. Joe is self-employed.

Example 2: Jane is a hair dresser at a salon. The salon supplies all the products she uses on the job. Jane's clients pay the salon for the services Jane provides. Jane receives a paycheck from the salon each week for 50% of the income from her clients. The salon takes out no taxes or FICA. For income budgeting purposes, Jane is an employee of the salon and her income should be budgeted as earned income, not self-employment.

Example 3: Rich provides home help care for his elderly neighbor, Sam. Sam receives assistance through DHS' Adult Home Help program to pay for Rich's services. Sam is Rich's employer. Rich's income should be budgeted as earned income.

Example 4: Mary Jo is a massage therapist at a local chiropractor's office. She uses a room in the office and uses their table. She provides her own oils and linens used for the massages and sets her own hours. She collects payment directly from the clients and pays the chiropractor's office \$10 for each massage provided. Mary Jo is self-employed.

Countable 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 **except** for Farm Loss amounts. See “Farming Expenses” below.

Allowable expenses are the **higher** of:

25% of the total proceeds, **or**

Actual expenses if the client chooses to claim and verify the expenses.

A person operates a retail store. Total proceeds for the month are \$3,200. Allowable expenses total \$3,800. The \$600 deficit CANNOT be used to offset any other income.

Allowable Self-Employment Expenses

Allowable expenses include: (also see [“Room and Board”](#)):

- 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. Do NOT allow costs for the provider’s own children.
- Any other identifiable expense of producing self-employment income **except** those listed below.

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.

After careful review of all of the documents submitted as of the day of the hearing this Administrative Law Judge finds the Department failed to follow policy when calculating the amount of income for the Claimant's FAP and CDC case. Clearly the Department should have requested and provided additional time for Claimant to provide the actual verification of all expenses related to the business before a FAP and CDC determination regarding eligibility and benefit amount was made. As outlined above the Claimant has the option of utilizing a 25% flat rate or actual expenses when calculating self employment. In this case the Claimant clearly intends to use his actual expenses and should be given the opportunity to fully disclose all expenses he wishes the Department to utilize when computing the groups income.

In addition upon review of the documents it should be noted that there are some transactions that took place in February 2009 regarding the securing of several investment in WACHOVIA SECURITIES whereby it appears there was a \$0 balance in January 2009 but as of February 2009 over \$92,000 appeared to be placed into these accounts. It is unclear where this money came from. The Department will obviously want to look further into all of the investment accounts and all transactions when determining income for February 2009 and prior and subsequent months.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds the Department failed to correctly budgeted the FAP and CDC benefits for the Claimants June 4, 2008 application.

Therefore, it is ORDERED that the Department's decision in this regard be and is hereby REVERSED. The Department shall reinstate a review of the Claimant's June 4,

2009-30845/JWO

2008 application and secure verification of expenses as allowed by policy and allow the Claimant time to provide the necessary documentation. Upon receipt of necessary verifications re-determine the Claimant's eligibility for both FAP and CDC and supplement for any loss in benefits if otherwise eligible.

/s/ _____
Jonathan W. Owens
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 10/20/09

Date Mailed: 10/20/09

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 90 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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