

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: 2009-31093
Issue No: 3002
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 26, 2009
Wayne 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 a hearing. After due notice, a telephone hearing was conducted on August 26, 2009. The Claimant appeared and testified. Nakesha Woods, and Rowana Massey, FIS, appeared on behalf of the Department.

ISSUE

Whether the Department properly computed the Claimant's Food Assistance ("FAP") benefits effective 7/22/09.

FINDINGS OF FACT

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

1. The Claimant applied for FAP benefits on June 29, 2009.
2. A Food Assistance Budget was compiled dated July 22, 2009 for the certification period 7/1/09 – 5/31/10. (Exhibit 4).

3. A second Food Assistance Budget was compiled on 7/22/09 for the certification period 8/1/09 – 5/31/10. (Exhibit 6).
4. Claimant has a household group of three (3) persons.
5. Claimant testified that she had income from Unemployment compensation of \$267.00/week. (Exhibit 3).
6. Claimant testified that she produced a final paycheck of \$150.00. (Exhibit 1).
7. Claimant testified that she received child support income as follows:
 - 4/16/09 - \$40.44
 - 4/26/09 - \$40.44
 - 5/13/09 - \$223.25
 - 5/28/09 - \$90.84
 - 6/18/09 - \$61.99
8. The Claimant testified that she is responsible for all utilities in his home.
9. The Claimant testified that her rental obligation at the time of application was \$418.00/month
10. There is no senior/disabled or veteran in the household.
11. Following the 7/22/09 budget, monthly FAP benefits were calculated in the amount of \$162.00/month. (Exhibit 4).
12. Following the second 7/22/09 budget, when Claimant's income was removed, monthly FAP benefits were calculated in the amount of \$216.00/month. (Exhibit 6).
13. Claimant objected to the FAP calculation and filed this appeal. The Department received the Claimant's Request for Hearing on August 23, 2009.

CONCLUSIONS OF LAW

The Food Assistance Program, 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”), formally known as the Family Independence Agency, administers the FAP program pursuant to MCL 400.10, *et. seq.* and MAC R 400.3001-3015. Departmental policies are found in the Program Administrative Manual (“PAM”), the Program Eligibility Manual (“PEM”), and the Program Reference Manual (“PRM”). The federal regulations define household income to include all earned income. 7 CFR 273.9(b). All monthly income must be converted to a nonfluctuating monthly amount. Only 80% of earned income is counted in determining FAP benefits. PEM 550. Under 7 CFR 273.9, as amended, \$135.00 is deducted from the gross income of FAP recipients in determining FAP grants. Unearned income includes SSI payments for family members (PEM 500, p. 33) and child support (PEM 500, p. 10). The average of child support payments received in the past 3 calendar months is used to prospectively calculate child support, unless changes are expected. Amounts that are unusual and not expected to continue should not be included in the calculation.

Under 7 CFR 273.9 deductions for excess shelter are also made. PEM 554. Id. There is a standard heat and utility deduction as well as a standard deduction for telephone bills. Id. The standard deductions are a set amount that is applied regardless of the actual expenses incurred by the Claimant.

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). PEM 505, p. 1. The Department should use the average of child support payments received in the past 3 calendar months, unless changes are expected. PEM 505, p. 4. If,

however, the past 3 months of child support is not a good indicator of future payments, the Department shall calculate an expected monthly amount for the benefit month based on available information and discussion with the client. Id.

In the present case, the child support was prospectively calculated using the 3 previous months' child support payments. Claimant testified, however, that the support received included payments for arrearages which were paid off by the time of the August budget. The Administrative Law Judge finds that this case falls under PEM 505 where the past three months of child support is not a good indicator of future payments which will not include arrearages. In order to proceed on her support award alone, however, Claimant would need to provide something from Friend of the Court indicating that the arrearage is paid off. Without evidence that the arrearage is paid off, it is reasonable for the Department to base the child support on the past three months.

If no such evidence is provided, the first FAP budget is analyzed as follows: According to the aforementioned policy on budgeting, Claimant's budget, utilizing \$213.13/month in child support and \$1,255.60 in unemployment compensation equals unearned income in the amount of \$1468.00 and a net monthly income of \$1211.00. This was obtained by subtracting the standard deduction of \$135.00 and the excess shelter amount of \$242.00 from 80% of the gross income (\$120.00) plus unearned income of \$1468.00. The amount of food assistance allotment is established by regulations at 7 CFR 273.10. A household of three people with a net monthly income of \$1211.00 is entitled to a monthly FAP grant of \$162.00 per month. RFT 260.

According to the aforementioned policy on budgeting for the second FAP budget, utilizing \$213.13/month in child support and \$1255.60 in unemployment compensation equals unearned income in the amount of \$1468.00 and a net monthly income of \$1031.00. This was obtained by subtracting the standard deduction of \$135.00 and the excess shelter amount of

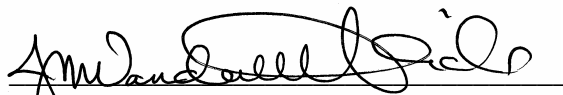
\$302.00 from the unearned income of \$1468.00. The amount of food assistance allotment is established by regulations at 7 CFR 273.10. A household of three people with a net monthly income of \$1031.00 is entitled to a monthly FAP grant of \$216.00 per month. RFT 260.

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

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that if the Claimant can produce evidence that the FOC arrearage is paid off, then the Department should recalculate the FAP budget based on Claimant's child support award only, not on prospective budgeting of child support. If Claimant cannot produce any such evidence, then the Department properly calculated FAP benefits.

Accordingly, the Claimant has ten days from the receipt of this order to produce evidence of the arrearage being paid off. If Claimant cannot produce such evidence the FAP award is affirmed. If Claimant can produce such evidence then the FAP budget shall be recalculated and Claimant and the Department shall supplement the Claimant for any lost benefits she was otherwise entitled to receive.



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

Date Signed: 09/22/09

Date Mailed: 09/22/09

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

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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

cc:

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