

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

██████████,

Claimant

Reg. No. 2009-31621

Issue No. 3003

Case No. ██████████

Load No. ██████████

Hearing Date:

August 31, 2009

Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Colleen Lack

HEARING DECISION

This matter is before the undersigned Administrative Law Judge upon pursuant to MCL 400.9; MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on August 31, 2009. The claimant appeared and testified. Karen Christian, FIM and Jennifer Rogers, ES, appeared on behalf of the department.

ISSUE

Is claimant receiving the correct monthly Food Assistance Program (FAP) allotment?

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 an ongoing recipient of FAP benefits in a household of 7 persons.
2. Claimant receives earnings of \$1192 bi-weekly.
3. One child in the household receives monthly SSI benefits of \$674.
4. Another child in the household receives a monthly SSI benefit of \$688.

5. Claimant had obligations for shelter and utility expenses.
6. In July 2009, the department recalculated claimant's FAP budget due to reported changes in income and shelter/utility expenses and determined that claimant is entitled to \$77 in FAP benefits per month. Department Exhibit 1 pp. 3-4.
7. Claimant requested a hearing contesting the amount of the FAP grant.

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 gross wages from employment and unearned income such as SSI benefits. 7 CFR 273.9(b). Only 80% of earned income is counted in determining FAP benefits. PEM 550. Stable income received two weeks is multiplied by 2.15 to take into account fluctuations due to the number of scheduled pays in a month. PEM 505. Under PEM 550 and RFT 255, \$188 is deducted from the gross income of FAP recipients in determining FAP grants for a group of 6 or more. Under 7 CFR 273.9 deductions for excess shelter expenses are also made when shelter expenses in excess of 50 percent of the household's income after other specified deductions have been allowed.

In the present case, the department averaged the income from three recent bi-weekly pay stubs showing earnings of \$1238.84, \$1192.43, and \$1192.44. Department Exhibit 1 pg. 4.

Using the 2.15 multiplier for bi-weekly income, the department calculated a standardized monthly earning of \$2596 for claimant. The higher May 29, 2009 pay of \$1238.84 included a shift premium of \$46.40. Department Exhibit 1 pg. 19. However, claimant testified that after May 2009 he was moved to 1st shift and is no longer able to earn the shift premium. Claimant earns only \$1192.44 every two weeks. Using the 2.15 multiplier for bi-weekly income, claimant's standardized monthly earning is \$2563.

Under PEM 505, the department is to discard a pay from the past 30 days if it is unusual and does not reflect the normal, expected pay amounts. The shift premium should have been excluded from claimant's income as it was not expected to continue. The resulting decrease in income does result in a higher FAP allotment than the \$77 calculated by the department.

According to the aforementioned policy on budgeting, claimant's household income would include 80% of his earned income (\$2050) plus the SSI benefits for the children (\$674 and \$ 688) for a total of \$3412. The standard deduction of \$188 is applied resulting in the household's adjusted gross monthly income of \$3224.

Claimant did not qualify for an excess shelter deduction as his shelter expenses of \$1350 (\$800 rent plus \$550 Heat and Utility Standard) were not in excess of \$1612 (50 percent of \$3224, the gross income after deductions were made.)

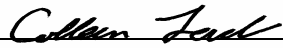
The amount of a monthly food assistance allotment is established by regulations at 7 CFR 273.10. A household of seven persons with a net monthly income of \$3224 is entitled to a monthly FAP grant of \$84 per month. RFT 260.

Based upon the foregoing facts and relevant law, it is found that the department did not correctly determine the monthly FAP allotment for the budget effective July 28, 2009.

DECISION AND ORDER

The ALJ, based upon the findings of fact and conclusions of law, decides that the claimant is not receiving the correct monthly FAP allotment and it is ordered that the Department's decision in this regard be and is hereby REVERSED.

Therefore, it is ORDERED that the department re-determine eligibility for FAP benefits retroactive to July 28, 2009 and award benefits to claimant, if appropriate, in accordance with this decision.



Colleen Lack
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 09/25/09

Date Mailed: 09/29/09

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.

CL/dj

cc:

