

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: 2009-31768

Issue No: 3015

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

September 17, 2009

Genesee County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

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, an in-person hearing was held on September 17, 2009. Claimant personally appeared and testified. Claimant's daughter, [REDACTED] also appeared and testified on claimant's behalf.

ISSUE

Did the Department of Human Services (the department) properly determine that claimant was to receive \$16 per month in Food Assistance Program benefits?

FINDINGS OF FACT

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

(1) On July 17, 2009, claimant filed an application for Food Assistance Program (FAP) benefits for herself only.

(2) Claimant is receiving unemployment compensation benefits in the amount of [REDACTED] every two weeks.

(3) Claimant has an obligation of home mortgage of [REDACTED] per month with home insurance and taxes included plus utilities.

(4) Claimant also has an active recoupment of \$10 which will be taken out of any Food Assistance Program benefits.

(5) The department caseworker generated a budget and determined that claimant was eligible to receive \$6 per month in Food Assistance Program benefits.

(6) On July 20, 2009, the department caseworker sent claimant notice that she was to receive \$6 per month in Food Assistance Program benefits.

(7) On August 29, 2009, claimant filed a request for a hearing to contest the department's assessment of her eligibility for Food Assistance Program benefits.

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).

For purposes of Food Assistance Program benefits, a department caseworker is charged with counting all of claimant's countable income. The group composition and program budgeting items specify whose income to count. The program budgeting items might also contain program-specific income deductions and disregards. Income means benefits or payments measured in money. It includes money a person owns even if it is not paid directly such as stock dividends that are automatically reinvested and income paid to a representative. The amount of income may be more than the amount a person actually receives because it is the amount before any deductions including deductions for taxes and garnishments. The amount before any deductions are taken is called a gross amount. PEM, Item 500, p. 1. Income remaining after applying the policy in this item is called countable. Count all income that is not specifically excluded. PEM, Item 500, p. 1.

In the instant case, the Food Assistance Program budget counted claimant's gross unearned income which included unemployment compensation benefits in the amount of [REDACTED] per week plus a [REDACTED] per week federal government economic recovery amount for a total gross income of [REDACTED] per month. The caseworker gave claimant the standard deduction of \$135 per month and deducted 30% net income of [REDACTED] from the total amount for a total net income of [REDACTED] per month.

The federal regulations at 42 CFR 273.2 have prepared a Food Assistance Program income limits table which is set forth at the Program Reference Manual, Table 250. The table provides that a household income of one person with a net income of [REDACTED] per month is eligible to receive Food Assistance Program benefits in the amount of \$16 per month. In the instant case, claimant has a prior recoupment action which requires that her benefits be reduced by \$10 per month which would allow claimant to receive a net benefit amount of \$6 per month in

Food Assistance Program benefits. The department's action in this matter must be upheld. The department properly counted claimant's unemployment compensation benefits and properly determined claimant's benefit amount.

Claimant's allegation of cancellation of Food Assistance Program benefits as being too expensive and unfair because of her other expenses is a compelling, equitable argument to be excused from the department policy requirements.

The claimant's grievance centers on dissatisfaction with the department's current policy. The claimant's request is not within the scope of authority delegated to this Administrative Law Judge pursuant to a written directive signed by the Department of Human Services Director, which states:

Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations or overrule or make exceptions to the department policy set out in the program manuals.

Furthermore, administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940).

However, this Administrative Law Judge has no equity powers. Therefore, the Administrative Law Judge finds that the department has established by the necessary, competent, material, and substantial evidence on the record that it was acting in compliance with department policy when it determined that claimant has excess income.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department of Human Services properly determined that claimant was entitled to receive \$6 per month in Food Assistance Program benefits.

According, the department decision is AFFIRMED.

/s/ _____
Landis Y. Lain
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: September 24, 2009

Date Mailed: September 24, 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.

LYL/vmc

cc:

