

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: 2009-6664

Issue No: 3003; 2014

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

May 5, 2009

Saginaw County DHS

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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 Tuesday, May 5, 2009. The claimant personally appeared and testified.

ISSUE

Did the department properly determine that the claimant had excess assets for Medical Assistance (MA) and was entitled to the same amount of Food Assistance Program (FAP) benefits as a result of her case review?

FINDINGS OF FACT

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

(1) The claimant was a recipient of FAP and MA benefits with a review required December 2008.

(2) On November 20, 2008, the department caseworker did a [REDACTED] to determine that the claimant received [REDACTED] in [REDACTED] [REDACTED] income. (Department Exhibit A)

(3) The claimant is the owner of a home at [REDACTED] [REDACTED]. The claimant does not live in the home because there is no electricity and plumbing where the home's equitable value is [REDACTED]. (Department Exhibit D and C)

(4) On November 20, 2008, the department caseworker did a query on the [REDACTED] [REDACTED] report showing that the claimant received [REDACTED] in August 2008, September 2008, and October 2008 for a total quarter payment of child support in the amount of [REDACTED]. (Department Exhibit D-E)

(5) On November 20, 2008, the department caseworker calculated the claimant's eligibility for FAP benefits with [REDACTED] income of [REDACTED] and monthly [REDACTED] of [REDACTED] (Department Exhibit F-G):

- The claimant had a total unearned income of [REDACTED]
- The claimant's adjusted gross income was [REDACTED] resulting from the claimant's gross income of [REDACTED] minus the standard deduction of [REDACTED].
- The claimant had no shelter expenses because she has not been living in her home, but staying in hotels paying a weekly rate, which is not a deductible expense because policy only allows staying in a hotel at a monthly rate in order to use it as a shelter deduction.
- As a result, the claimant's net income was [REDACTED] which resulted in a monthly FAP benefit of [REDACTED]

(6) On November 20, 2008, the department caseworker sent the claimant a notice that her FAP benefits would be [REDACTED] per month from December 2008 through November 2009 for a household size of two with a net income of [REDACTED] (Department Exhibit H)

(7) On November 21, 2008, the department caseworker calculated the claimant's continued eligibility for MA benefits, but determined that the claimant was not eligible for MA benefits because she was not living in her homestead which resulted in the department caseworker counting her homestead as an asset since she wasn't living there of [REDACTED] which made the claimant over the group's asset limit of [REDACTED]. (Department Exhibit I-L)

(8) On November 21, 2008, the department caseworker sent the claimant that a notice that her MA benefits would end on December 3, 2008 because of excess assets. (Department Exhibit M-N)

(9) On November 20, 2008, the department caseworker sent the claimant a notice that Healthy Kids medical coverage would still continue for her daughter. (Department Exhibit O)

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

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).

INCOME

DEPARTMENT POLICY

All Programs

The group composition and program budgeting items specify whose income to count. The program budgeting items might also contain program-specific income deductions or disregards.

Income means benefits or payments measured in money. It includes money a person owns even if NOT paid directly such as stock dividends automatically reinvested and income paid to a representative.

Earned income means income received from another person or organization or from self-employment for duties that were performed for remuneration or profit. Unearned income means all income that is NOT earned income. The item specifies whether the income is earned or unearned.

The amount of income counted 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 is called the **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.

GARNISHMENT OR OTHER WITHHOLDING

All Programs

Income includes amounts withheld from income which are:

- . voluntary, or
- . to repay a debt, or
- . to meet a legal obligation. PEM, Item 500, p. 2.

PROSPECTIVE BUDGETING/INCOME CHANGE PROCESSING

DEPARTMENT PHILOSOPHY

A group's benefits for a month are based, in part, on a prospective income determination. A "best estimate" of income expected to be received by the group during a specific month is determined and used in the budget computation.

Get input from the client whenever possible to establish this "best estimate" amount. The client's understanding of how income is estimated reinforces reporting requirements and makes the client an active partner in the financial determination process. PEM, Item 505, p. 1.

DEPARTMENT POLICY

FIP, SDA, CDC and FAP

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).

Only countable income is included in the determination (see PEM 500).

Each source of income is converted to a standard monthly amount, unless a full month's income will not be received (see Standard Monthly Amount in this item). PEM, Item 505, p. 1.

DETERMINING BUDGETABLE INCOME

FIP, SDA, CDC, FAP

Determine budgetable income using countable, available income for the benefit month being processed. PEM, Item 505, p. 2.

Standard Monthly Amount

Stable and Fluctuating Income

A standard monthly amount must be determined for each income source used in the budget.

Convert stable and fluctuating income that is received more often than monthly to a standard monthly amount. Use one of the following methods:

- . Multiply weekly income by 4.3.
- . Multiply amounts received every two weeks by 2.15.
- . Add amounts received twice a month.

This conversion takes into account fluctuations due to the number of scheduled pays in a month.

Exception: Do not convert income for the month income starts or stops if a full month's income is not expected in that month. Use actual income received or income expected to be received in these months. PEM, Item 505, p. 7.

WHEN TO COMPLETE A BUDGET

FIP, SDA, CDC, FAP

Client reporting requirements **do not** necessarily affect when a budget must be completed.

Complete a budget when:

- . the department is made aware of or the client reports a change in income that will affect eligibility or benefit level, or
- . a reported change results in the need to convert income to or from a standard monthly amount. PEM, Item 505, p. 8.

If an **ongoing** MA recipient or active deductible client has excess assets, initiate closure. However, delete the pending negative action if it is verified that the excess assets were disposed of. Payment of medical expenses, living costs and other debts are examples of ways to dispose of excess assets without divestment. LTC and waiver patients can be penalized for divestment (see PEM 405). PEM, Item 400, p. 4.

ASSETS

DEPARTMENT POLICY

FIP, SDA, LIF, Group 2 Persons Under Age 21, Group 2 Caretaker Relative, SSI-Related MA, and AMP

Assets must be considered in determining eligibility for FIP, SDA, LIF, Group 2 Persons Under Age 21 (G2U), Group 2 Caretaker Relative (G2C), SSI-related MA categories and AMP.

- . “CASH” (which includes savings and checking accounts)
- . “INVESTMENTS”
- . “RETIREMENT PLANS”
- . “TRUSTS” PEM, Item 400.

LIF Asset Limit

LIF Only

\$3,000. PEM, Item 400, p. 4.

SSI-Related MA Asset Limit

SSI-Related MA Only

For Freedom to Work (PEM 174) the asset limit is \$75,000. IRS recognized retirement accounts (including IRA's and 401(k)'s) may be of unlimited value.

For Medicare Savings Program (PEM 165) and QDWI (PEM 169) the asset limit is:

- . \$4,000 for an asset group of one
- . \$6,000 for an asset group of two

For all other SSI-related MA categories, the asset limit is:

- . \$2,000 for an asset group of one
- . \$3,000 for an asset group of two. PEM, Item 400, p. 4.

AVAILABLE

FIP, SDA, LIF, G2U, G2C, SSI-Related MA and AMP

An asset must be available to be countable. **Available** means that someone in the asset group has the legal right to use or dispose of the asset. PEM, Item 400, p. 6.

Assume an asset is available unless evidence shows it is **not** available. PEM, Item 400, p. 6.

Joint Cash and Retirement Plans

FIP, SDA, LIF, G2U, G2C, SSI-Related MA and AMP

This section applies to the types of assets listed under "**CASH**" and "**RETIREMENT PLANS**" below.

Count the entire amount **unless** the person claims and verifies a different ownership. Then, each owner's share is the amount he owns.

SSI-Related MA Only

Exception: Apply the following when an L/H or waiver patient (see PRG, Glossary, and PEM 106) and his spouse jointly own the asset:

- . Consider the client the sole owner in determining the community spouse resource allowance (CSRA). PEM 402 describes the CSRA.
- . Proceed as follows for all other purposes:
 - .. If the spouse is an MA-only client or receives FIP or SSI, each spouse owns an equal share unless otherwise claimed and verified.
 - .. If the spouse is **not** an MA-only client and does **not** receive FIP or SSI, consider the asset totally available unless otherwise claimed and verified.

Exception: Count equal shares of an asset owned by more than one SSI-related MA child unless the person claims and verifies a different ownership.

Exception: If the owners are an SSI-related MA child and his parent(s) and asset deeming applies, count the total amount as the child's unless the person claims and verifies a different ownership. PEM, Item 400, pp. 7-8.

Lump Sums and Accumulated Benefits

FIP, SDA and AMP Only

Lump-sums and accumulated benefits are assets starting the month received.

A person might receive a single payment that includes both accumulated benefits and benefits intended as a payment for the current month. Treat the portion intended for the current month as income. PEM, Item 400, p. 9.

LIF, G2U, G2C, SSI-Related MA

Lump sums and accumulated benefits are income in the month received. See PEM 500 about countable income policy.

Exception: The following are assets:

- . Income tax refunds
- . Nonrecurring proceeds from the sale of assets
- . Payments that are excluded assets PEM, Item 400, p. 10.

RETIREMENT PLANS

FIP, SDA, LIF, G2U, G2C, SSI-Related MA and AMP

This section is about the following types of assets:

- . Individual retirement accounts (IRAs)
- . Keogh plans (also called H.R. 10 plans)
- . 401k plans
- . Deferred compensation
- . Pension plans
- . Annuities--An annuity is a written contract establishing a right to receive specified, periodic payments for life or for a term of years. PEM, Item 400, pp. 14-15.

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.

When determining eligibility for FAP benefits, the household total income must be evaluated. All unearned income of each household member must be included unless specifically excluded. RSDI and child support payments are not excluded and must be counted in determining FAP eligibility. PEM, Item 500. The department in calculating the budget utilized the written verification of the claimant's [REDACTED] benefits of [REDACTED] and [REDACTED] of [REDACTED] for a total gross unearned income of [REDACTED]. After subtracting the standard [REDACTED] deduction, the claimant's adjusted gross income was [REDACTED]. In addition, the claimant did not receive an excess shelter deduction because she lives in a hotel at a weekly rate instead of a monthly rate which would be deductible as a shelter expense. As a result, the claimant's net income was determined to be [REDACTED].

The department in compliance with federal regulations prepared the appropriate Food Assistance Issuance Table located at PRM, Tables, Charts and Schedules 260, which indicates that a two person benefit group with a net income of [REDACTED] is entitled to receive a FAP allotment of [REDACTED] per month. (7 CFR 273.10) In this case, the Administrative Law Judge has reviewed the FAP budget and finds that the department properly computed the claimant's net income and properly determined the claimant's FAP allotment of [REDACTED].

The claimant does not live in the home that she considers her homestead because there is no plumbing or electricity. The claimant is currently living in a hotel on a weekly basis with her daughter. The claimant only owns one home, which is considered her homestead. The claimant is only renting a hotel room, she does not own it. As a result, she only owns one homestead. If the

claimant's homestead was excluded, she would be asset eligible for MA. Therefore, the Administrative Law Judge finds that the department has not established that it was acting in compliance with department policy when the determination was made that the claimant had excess assets for purposes of MA.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department correctly determined the claimant's FAP benefits should be [REDACTED] per month.

Accordingly, the department's decision is **AFFIRMED**.

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department incorrectly denied the claimant's MA benefits because she had excess assets. The department incorrectly counted the claimant's homestead as an asset because she wasn't living there.

Accordingly, the department's decision is **REVERSED**. The department is ordered to re-determine the claimant's eligibility for MA benefits retroactive to November 2008 by excluding the claimant's homestead as an asset and determining her financial eligibility for MA.

/s/ _____
Carmen G. Fahie
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: June 18, 2009

Date Mailed: June 18, 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 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 mailing 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.

CGF/vmc

cc:

