

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: 2009-7406

Issue No: [REDACTED]

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

February 25, 2009

Marquette County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne L. Keegstra

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 telephone hearing was held on February 25, 2009. The claimant personally appeared and testified.

ISSUES

1. Did the department properly budget the claimant's self-employment income and expenses?
2. Did the department properly determine that the claimant had excess income for the Child Development and Care (CDC) program, Food Assistance Program (FAP), and Medical Assistance (MA) Program?

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 CDC, FAP and MA (L) when his case came due for an annual review in December, 2008 (Hearing Summary).
2. The claimant's CDC case was closed on December 16, 2008, due to an excess income determination.
3. The claimant's FAP benefits were cancelled effective December 31, 2008, due to an excess income determination (Department Exhibit #2).
4. The claimant's MA benefits for his children (Healthy Kids) were terminated on December 16, 2008, due to a determination that the claimant had excess income (Department Exhibit #9)
5. The claimant's wife works for Widcorp and her income was prospected using 30 days of earnings from November, 2008 (Department Exhibit #5).
6. The claimant does receive child support for his son, [REDACTED]. The department considered the last three months (September, October and November, 2008) of child support payments and averaged out the monthly amount to budget (Department Exhibit #6)
7. The claimant is self-employed and provided the department with a nine-month budget for his business, showing the business revenues and expenses. The department disallowed the following of the claimant's listed deductions: depreciation, professional service, discounts and refunds, meals and entertainment, travel, and "other" (Department Exhibit #8).
8. The department did not compute a "spend-down" or deductible for the claimant's MA benefits.

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).

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 (DHS or department) 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).

Department policy states:

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.

Exception: The amount of self-employment income before any deductions is called **total proceeds**. The **gross** amount of self-employment income means the amount after deducting allowable expenses from total proceeds, but before any other deductions. 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.

CHILD SUPPORT

Definitions

All Programs

Child support is the money paid by an absent parent(s) for the living expenses of his/her child(ren). Medical, dental, child care and educational expenses may also be covered.

Child support is income to the child for whom the support is paid.

Court-ordered child support may be either certified or direct. PEM, Item 500, p. 9.

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 care at 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.

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.

Countable Self-Employment Income

Countable earnings from self-employment equal 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. PEM, Item 500, pp. 12-13.

Allowable expenses are the **higher** of:

- . 25% of the total proceeds, **or**
- . actual expenses if the client chooses to claim and verify the expenses. PEM, Item 500, p. 13.

Example: 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. PEM, Item 500, p. 13.

Allowable Self-Employment Expenses

Allow expenses include (also see “Room and Board”):

- . Identifiable expenses of labor, stock, raw material, seed, fertilizer, etc. PEM, Item 500, p. 13.
- . Interest and principal on loans for equipment, real estate or income-producing property. PEM, Item 500, p. 13.
- . Insurance premiums on loans for equipment, real estate and other income-producing property. PEM, Item 500, p. 13.
- . Taxes paid on income-producing property. PEM, Item 500, p. 13.
- . Transportation costs while on the job (example: fuel), but **NOT** routine transportation to and from work. PEM, Item 500, p. 14.
- . Purchase of capital equipment. PEM, Item 500, p. 14.
- . A child care provider’s cost of meals for children. Do **NOT** allow costs for the provider’s own children. PEM, Item 500, p. 14.
- . Any other identifiable expense of producing self-employment income **except** those listed below. PEM, Item 500, p. 14.

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. PEM, Item 500, p. 14.

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.

MA GROUP 2 INCOME ELIGIBILITY

Deductible

Deductible is a process which allows a client with excess income to become eligible for Group 2 MA if sufficient allowable medical expenses are incurred.

Active Deductible

Open an MA case **without ongoing Group 2 MA coverage** on CIMS as long as:

- . The fiscal group has excess income, **and**
- . At least one fiscal group member meets all other Group 2 MA eligibility factors.

Such cases are called active deductible cases. Periods of MA coverage are added on CIMS each time the group meets it deductible.

Deductible Period

Each calendar month is a separate spend-down period.

Deductible Amount

The fiscal group's monthly excess income is called a deductible amount. PEM 545, pp. 8-9.

Closures

Close an active deductible case when **any** of the following occur:

- . No one in the group meets **all** nonfinancial eligibility factors.
- . Countable assets exceed the asset limit.
- . The group fails to provide needed information or verification.

Exception: Do not close the case just because the group fails to verify sufficient allowable medical expenses to meet its deductible if:

- . The group does not return the redetermination form.
- . You cannot locate any of the group members.
PEM, Item 545, p. 11.

The claimant's FAP, CDC and MA case was due for an annual review in December, 2008. The department received the necessary verifications and completed a budget for the case. The department determined that the claimant had excess income for

each of the programs (FAP, CDC, and MA) and closed each of the benefit cases. The claimant's wife works and her income was properly prospected using the average of her earnings for November, 2008. The department also properly prospected the child support income by averaging three months, as required by policy.

The claimant is self-employed and provided a nine-month budget from his business, showing his income and expenses. The department disallowed certain deductions that the claimant had on his budget. Departmental policy indicates that countable income from self-employment equals the total proceeds minus allowable expenses of producing the income. PEM 500, p 13. The department disallowed depreciation, which is specifically not allowed as a deduction. PEM 500, p 14. The department also disallowed professional services, which the claimant explained were his fees for accounting and legal services. Departmental policy indicates that any identifiable expense of producing self-employment income is deductible, EXCEPT a specific list of deductions not permissible. PEM 500, p 14. Professional services are not listed as not allowed. These services are typically required as a cost of doing business, thus the department should have allowed this expense as a deduction. The claimant had a deduction of discounts and refunds listed on his budget that the department disallowed. However, this is again a cost of doing business that is not specifically listed as not allowed in department policy. Thus, the department should have allowed this deduction. The claimant included a deduction for meals and entertainment. This would fall under the listed exceptions to deductions, which is personal entertainment or other personal business expenses. The department properly did not allow this deduction. The claimant also included a deduction for travel. An allowable expense is specifically listed as transportation costs while on the job. PEM 500, p 14. Therefore, this item should have

been allowed by the department as a deduction. The claimant also has “other expenses” listed. There is not enough information to determine what this deduction would cover, but the claimant can provide documentation of what it covers and the department should apply the policy requirements to see if it is allowable.

Department policy indicates that the claimant can deduct the higher of 25% of the total proceeds or actual expenses if verified. In this case, the department properly determined that the claimant’s actual expenses were higher than 25% of his total proceeds. However, the department did not include all allowable deductions for the claimant. Thus, the budget amounts the department entered for self-employment income are inaccurate and must be re-figured to include the allowable deductions. While this still may result in excess income for the claimant for FAP, CDC and MA benefits, the quoted policy requires it to be computed.

Further, even if the claimant has excess income, the department needs to determine if the claimant and his family (wife and children) are eligible for any other category of MA coverage. The department did not complete any kind of spend-down or deductible for the claimant and his family, they simply determined the claimant had excess income and denied the program benefits for MA-L. However, a deductible is a process which allows a client with excess income to become eligible for Group 2 MA if sufficient allowable medical expenses are incurred. PEM 545. In this case, the claimant and his family would have been eligible for Group 2 MA coverage with a spend-down or deductible. The department representative indicated that the claimant and his family were not eligible for a spend-down because the children were not Medicaid eligible. However, departmental policy indicates that FIP-related Group 2 MA will be available to parents and caretaker relatives who meet certain criteria. The key factor in this case is

that the claimant and his wife are parents of dependent children. A dependent child is defined in policy as being born, meeting FIP eligibility factors, being a resident, being under age 18 and the child is:

- A FIP recipient
- A SSI recipient
- A MA applicant
- Active MA deductible
- A MA recipient
- A MICHild recipient (PEM 135)

In this case, the department representative indicates that the children are not MA applicants because the MA application was denied. However, policy does not contemplate whether the application is approved or denied, but simply submitted. Thus, the claimant's children are properly considered to be MA applicants. Since the children meet all the other eligibility factors in policy, the claimant and his family are eligible for Caretaker Relative N Group 2 FIP-related MA. If the claimant and his family still have excess income after the recomputation of the self-employment deductions, the budget should be completed for Caretaker Relative N Group 2 FIP-related MA and the claimant offered a spend-down or deductible.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department improperly computed the claimant's self-employment income and did not allow some allowable deductions. This Administrative Law Judge further finds that the department did not properly consider the claimant and his family for Caretaker Relative N Group 2 FIP-related MA, after determining ineligibility for another MA category.

Accordingly, the department's action is REVERSED. Department shall:

1. Allow the claimant's self-employment deductions of professional services, discounts and refunds and travel and compute the budgets for FAP, CDC and MA accordingly.
2. If the claimant still has excess income for MA eligibility, issue the spend-down or deductible for the family based on this excess income.

SO ORDERED.

/s/ _____
Suzanne L. Keegstra
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: March 10, 2009

Date Mailed: March 11, 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.

[REDACTED]

cc:

[REDACTED]