

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201031921
Issue No.: 3003/2026
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: July 22, 2010
Oakland County DHS (02)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 held on July 22, 2010. The claimant appeared and testified. [REDACTED], ES appeared on behalf of the Department.

ISSUE

1. Was the Claimant's FAP allotment computed and allocated correctly?
2. Was the Claimant's medical spend down deductible properly computed?

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 is a Food Assistance (FAP) recipient. The Claimant applied for FAP benefits on July 20, 2009. The Claimant has a FAP group of one.
- 2) On January 1, 2010 the Claimant became eligible to receive RSDI and began receiving \$1346 in RSDI benefits.
- 3) The Claimant has \$807.60 deducted from his RSDI to pay child support arrearages. The deduction of child support began in March 2010 through the date of the hearing. The Child support will end when a \$5400 arrearage is paid.
- 4) The Claimant paid rent in January 2010 in the amount of \$150 per month which amount included utilities.

- 5) Prior to January 1, 2010 the Claimant paid no rent as he did not receive RSDI income.
- 6) Since June 13, 2010, after the claimant was assaulted at his then residence, he moved to an extended stay facility where he pays no rent or utilities.
- 7) The FAP budget prepared by the Department on April 1, 2010 is not correct as it does not credit the Claimant with child support expenses of \$807.60 and does not include a shelter allowance for rent in the amount of \$150. Exhibit 1
- 8) The FAP budget prepared by the Department on May 1, 2010 is not correct; it does not credit the claimant the correct child support amount of \$807.60 and uses a housing expense of \$400 for rent and a standard \$555 heat allowance which is incorrect. The rent amount used in the budget was not confirmed by the Claimant but by another recipient of benefits and is in error. The correct rent for this period was \$150 per month and heat was included in the rent. Exhibit 2
- 9) The medical spend down amount of \$918 determined as of January 1, 2010 is correct. Exhibit 3
- 10) The Claimant requested a hearing on April 4, 2010 and argues that the Department improperly calculated and credited his child support and that his Medical Assistance spend down (deductible) is not correct.

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 (formerly known as the Family Independence Agency) administers the FAP program pursuant to CML 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).

When determining eligibility for FAP benefits, the household's total income must be evaluated. All earned and unearned income of each household member must be included unless specifically excluded. BEM 500. A standard deduction from income of \$132 is allowed for households of claimant's size. Certain non-reimbursable medical expenses above \$35 a month may be deducted for senior/disabled/veteran group

members. Another deduction from income is provided if monthly shelter costs are in excess of 50% of the household's income after all of the other deductions have been allowed, up to a maximum of \$459 for non-senior/disabled/veteran households. BEM, Items 500 and 554; RFT 255; 7 CFR 273.2. Only heat, electricity, sewer, trash and telephone are allowed deductions. BEM 554. Any other expenses are considered non-critical, and thus, not allowed to be deducted from gross income. Furthermore, RFT 255 states exactly how much is allowed to be claimed for each shelter expense. Policy states that \$34 allowed to be claimed for telephone expenses, and \$102 is allowed to be claimed for non-heat electricity expenses, regardless of the actual bill. \$555 dollars may be claimed if the claimant has heating costs. \$57 may be claimed for water or sewer expenses.

In this case, the Administrative Law Judge has reviewed both the FAP budgets, 4/1/10 and 5/1/10 and finds that the Department did not properly compute either budget requiring that both of the budgets must be recalculated. The gross unearned income benefit amount of \$1346 for RSDI must be counted as unearned income, and a child support expense in the amount of \$807.60 must be included in the budget as should the a shelter allowance amount of \$150 for rent. BEM 503. The child support expense, rent and RSDI benefit amounts were verified by the claimant during the course of the hearing.

The budget prepared May 1, 2010 is also in error and must be recalculated to include the Claimant's RSDI of \$1346 and child support expense of \$807.60. The shelter expense for rent must be recomputed to reflect rent in the amount of \$150 not \$400. This is a clear error in the Department's calculations.

Lastly, the Claimant's FAP budget going forward must be recomputed to reflect that after June 13, 2010, the Claimant no longer pays rent, continues to receive RSDI of \$1346 and has a child support expense of \$807.60.

The Claimant is reminded to report within 10 days any change in circumstances including any reduction in child support once the arrearage amount is paid in full and further any change in rent as these changes would likely affect the amount of FAP benefits the Claimant is entitled to receive.

MEDICAL SPENDOWN

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 (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, et seq., and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

In the instant case, the Claimant questions the Department's calculation of his Medical deductible. The undersigned has reviewed the MA budgets for April 2010 and July 2010 and found them to be correct. The April budget utilized the following income. The claimant's unearned income is \$1346 per month and was credited with the standard income exclusion of \$20 to yield a net unearned income of \$1326. The protected income limits of \$408.00 equals a \$918.00 deductible. ($\$1346 - \$20 = \$1326 - \$408 = \$918$).

The protected income level (PIL) is a set allowance for non-medical need items such as shelter, food and incidental expenses.

PRT 240 lists the Group 1 MA PILs based on shelter area and fiscal group size. (BEM 544, p. 1)

And:

The claimant lives in area VI and the protected income level is \$408.00. (RFT 240, p.1).

During the hearing the claimant questioned why his child support expense was not deducted from his RSDI income to reflect more accurately the actual remaining RSDI income actually available to him after the Child support arrearage is paid. BEM 541, page 1 only allows a deduction for child support expense in the following circumstance:

Deduct court-ordered child support paid by an initial person's spouse to a child who does not live with the fiscal group. The amount deducted is: the amount specified in the court order or the actual amount if less than the court order or the actual amount if more than the court order and the amount includes arrearages. Arrears must be paid on behalf of a dependent child to allow the deduction.

This provision only allows the deduction of child support expense when a group of two adults with income is reviewed to determine spend down amount and one adult pays child support expense. Under that factual circumstance the deduction is allowed because both adults' income is being counted.

This ALJ sympathizes with the claimant, but there is nothing that can be done to change the above equation as the BEM 541 reflects the current Policy in effect and to be followed when determining a medical spend down amount. As the Administrative Law Judge has reviewed the medical assistance budget and found no errors in the income numbers used to calculate claimant's spend down amount, claimant's medical spend down budget, as given, is correct.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department's decision to award claimant an FAP allotment of \$309 was incorrect.

Accordingly, the Department's decision is REVERSED IN PART.

The Department is ORDERED to recalculate claimant's FAP allotment budget for the months of April and May 2010 and to use the correct unearned income amount of \$1346, to credit the claimant with child support expense of \$807.60 per month and to include a shelter expense for rent of \$150. The Department shall issue any supplemental FAP benefits to which the claimant may be entitled, in accordance with policies found in the Brides Administrative and Eligibility Manuals.

The Department is ordered to recalculate the Claimant's FAP budget beginning June 13, 2010 and to reflect the fact that the claimant no longer has a shelter expense for rent and that the RSDI income the Claimant receives is \$1346 and child support in the amount of \$807.60.

The Department's determination with regard to the Medical spend down deductible of \$918 is correct and is AFFIRMED.



Lynn M. Ferris
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: 08/02/2010

Date Mailed: 08/02/2010

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 of the rehearing decision.

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