

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.: 201036215
Issue No.: 3003
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: July 28, 2010
Wayne County DHS (18)

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 28, 2010. The claimant appeared and testified. [REDACTED], FIM appeared and testified on behalf of the Department.

ISSUE

Was the claimant's FAP allotment computed and allocated correctly?

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 Food Assistance benefits (FAP) recipient and currently receives \$154 in benefits as of July 1, 2010.
- 2) In January 2010 the Claimant began receiving RSDI in the amount of \$837.50 per month.
- 3) The Claimant's daughter also receives \$223 a month in RSDI.
- 4) The Claimant originally protested the medical spend down amount of \$245 (deductible) but subsequently agreed with the Department's calculation and no longer wished to proceed with that issue.
- 5) The FAP budget calculated by the Department included an amount in calculating gross income for FIP benefits in the amount of \$403 per month. The Claimant did not receive the FIP benefits.

- 6) The Department's finding of noncooperation by the Claimant in regards to her FIP benefits was in error, and the Claimant was not noncooperative. Once the Claimant began receiving RSDI she no longer received FIP and withdrew her request for hearing regarding the FIP non cooperation. Once the hearing request was withdrawn, the Bridges system automatically determines the non cooperation was valid even though the Department was in error.
- 7) The Department's FAP budget for the Claimant was in error as it included FIP income in the amount of \$403 per month and did not include the RSDI received by the Claimant's child in the amount of \$223 per month. The Budget was calculated in error and must be recalculated beginning March 1, 2010 through the date of the hearing.
- 8) The Claimant's housing expense is \$136 per month.
- 9) The Shelter expense deduction calculated by the Department for the FAP budget dated March 1, 2010 is correct.
- 10) The Claimant's current group size is 2 members.
- 11) During the hearing the Department agreed to recalculate the budget with the correct unearned income amounts and without including the FIP. This budget is correct and determines the Claimant is entitled to \$154 in Food Assistance allotment per month. Exhibit 9
- 12) The Claimant filed a hearing request on May 17, 2010 which was received by the Department on May 18, 2010 protesting the amount of her FAP 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 (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.

The Department erred when it included the FIP cash assistance of \$403 which was not received by the Claimant when computing the Claimant's FAP budget from and after March 1, 2010. The Department also erred when it failed to include the RSDI received by the Claimant's daughter in the amount of \$223 per month. For these reason the budget was incorrect and must be recalculated and a supplement must be issued to the Claimant for the FAP benefits she was otherwise entitled to receive retroactive to March 1, 2010.

In this case, the Administrative Law Judge has reviewed the FAP budget and the Notice of Case Action dated February 22, 2010 (Exhibits 6 and 7) and finds that the Department did not properly compute the claimant's gross unearned income. The gross unearned income should include the unearned income of the Claimant's RSDI of \$837.50 and her daughters' \$223 and not the FIP which was not received of \$403. Simply put the unearned income is not correct and should be \$1065.

As the Administrative Law Judge has reviewed the budget and found errors in the unearned income numbers used to calculate claimant's FAP benefit amount, and the improper inclusion of FIP benefits which were not received, the claimant's FAP budget, as given, is incorrect. As the budget contains errors, the Department did not correctly calculate claimant's benefits, and must therefore re-calculate the budget.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department's calculation of the Claimant's FAP allotment was incorrect beginning with the Notice of Case Action for FAP benefits from March 1, 2010 was incorrect.

Accordingly, the Department's decision is REVERSED.

The Department is ORDERED to re-run claimant's FAP allotment budget for the months beginning March 1, 2010 in conformance with the Findings of Fact made herein.

The Department is also ordered to issue the Claimant a supplement for FAP benefits the Claimant was otherwise entitled to receive retroactive to March 1, 2010 and shall include the months of April 2010 and May 2010.



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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