

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: 201012894  
Issue No: 3002  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
January 28, 2010  
Macomb County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

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 conducted on January 28, 2010. The Claimant appeared and testified along with her husband, [REDACTED]. Colleen Williams, ES appeared on behalf of the Department.

ISSUE

Whether the Department properly closed the Claimant's Food Assistance ("FAP") benefits effective 11/3/09 based on excess income.

FINDINGS OF FACT

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

1. The Claimant applied for FAP Benefits on 10/2/09.
2. A food assistance gross income test budget was completed which indicated that Claimant had excess income. (Exhibit 1, p. 2).

3. The Department denied Food Assistance Benefits on November 3, 2009 due to excess income.
4. Claimant testified that she has a household group of six (6) people who all purchase and prepare food together.
5. Claimant testified that her stepchildren are also living with Claimant every other weekend with additional time during the summer and some extra over nights recently. The stepchildren have been with Claimant 15 days in the past month.
6. The Claimant testified that the household has unearned income as follows:
  - a. \$774.00/bi-weekly unemployment compensation
  - b. \$400.00/month child support approximately
  - c. \$850.00/month rent
7. The Claimant testified that the household has earned income as follows:
  - a. \$1000.00/month gross wages from [REDACTED]
  - b. Variable wages from [REDACTED] which was counted by the Department as \$561.45/biweekly.
8. Claimant owns a home which costs \$1215.19 inclusive of mortgage, insurance and property taxes. Claimant receives rent this owned property which is accounted for above in unearned income.
9. The Claimant testified that she also has a rent obligation of \$1400.00 per month for the home she lives in and is also responsible for payment of utilities in the home.
10. Claimant objected to the FAP denial and filed this appeal. The Department received the Claimant's Request for Hearing on 11/23/09.

CONCLUSIONS OF LAW

The Food Assistance Program, 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”), formally known as the Family Independence Agency, administers the FAP program pursuant to MCL 400.10, *et. seq.* and MAC R 400.3001-3015. Departmental policies are found in the Bridges Administrative Manual (“BAM”), the Bridges Eligibility Manual (“BEM”), and the Reference Tables (“RFT”).

**A. Group Composition**

The primary caretaker is the person who is primarily responsible for a child’s day-to-day care and supervision in the home where the child sleeps more than half of the days in a calendar month, on average, in a twelve-month period. BEM 212, p. 1. When a child spends time with multiple caretakers who do not live together (e.g., joint physical custody, parent/grandparent, etc.), the Department must determine a primary caretaker. Only one person can be the primary caretaker and the other caretaker(s) is considered the absent caretaker(s). The child is always in the FAP group of the primary caretaker. BEM 212, p. 3. If otherwise eligible, the absent caretaker may receive FAP benefits for the child, when the child is visiting the absent caretaker for more than 30 days (i.e., not temporarily absent from the primary caretaker’s home.) Id.

The Department is to determine the primary caretaker by using a twelve month period by asking the client how many days the child sleeps at his/her home in a calendar month. The Department should then accept the client’s statement unless questionable or disputed by another caretaker. If primary caretaker status is questionable or disputed, verification is needed. The primary caretaker status should be re-evaluated when a new or revised court order changing custody or visitation is provided or there is a change in the number of days the child sleeps in

another caretaker's home and the change is expected to continue, on average, for the next twelve months. BEM 212, p. 4.

In the present case, the Claimant testified that the stepchildren were in the home every other weekend, but for the last month the stepchildren have been staying additional nights. There was no testimony that there was a change in parenting time or that the additional overnights were expected to continue. The Administrative Law Judge finds that the children are currently staying with the Claimant half time but that has not lasted more than 30 days. Accordingly, unless this trend continues or there is a change in the parenting time arrangement, Claimant is not the primary caretaker for the stepchildren and they should not be included in the FAP group.

**B. Income Test**

The federal regulations define household income to include all earned and unearned income. 7 CFR 273.9(b). All monthly income must be converted to a nonfluctuating monthly amount. Only 80% of earned income is counted in determining FAP benefits. BEM 550. Under 7 CFR 273.9, as amended, \$163.00 is deducted from the gross income of FAP recipients in determining FAP grants. A non-categorically eligible Senior/Disabled/Veteran (SDV) FAP group must have income below the net income limits. BEM 550.

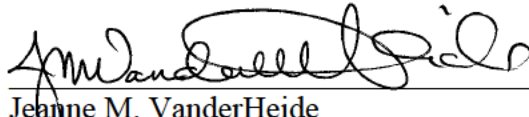
In the present case, according to the aforementioned policy on budgeting, for the 1/3/09 budget, Claimant's group had an undisputed monthly gross income of \$4,259.00 (80% of Pat O'Briens wages of \$2166/month + \$1677/month unemployment + \$850 unearned rental income). As a result, Claimant's undisputed group income is over the income limits of \$3,200.00 per month for a group size of six (6) people. RFT 250. Claimant disputes that the amount used for her husband's second job and child support were accurate. The undersigned agrees with Claimant; however, Claimant's income is over the application income limit even

without these two additional income sources. Accordingly, based on a review of the facts and regulations, Claimant does not qualify for FAP benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the Department properly closed the Claimant's FAP allotment based on excess income.

Accordingly, the Department's FAP closure effective 11/3/09 is AFFIRMED.



Jeanne M. VanderHeide  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: 03/04/10

Date Mailed: 03/05/10

**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.

JV/dj

cc:

