

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

IN THE MATTER:

[REDACTED]

Reg No. 201019331
Issue No. 3003
Case No. 1 [REDACTED]
Load No. [REDACTED]
Hearing Date: September 29, 2010
Presque Isle County DHS

ADMINISTRATIVE LAW JUDGE: Marlene B. Magyar

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, an in-person hearing was held on September 29, 2010. Claimant personally appeared and testified.

ISSUE

Did the department properly budget claimant's Food Assistance Program (FAP) allotment at review?

FINDINGS OF FACT

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

1. Claimant and his wife are ongoing FAP recipients who reside in [REDACTED]
2. In January 2010, the department conducted a mandatory annual review of the couples' FAP case to determine whether they continued to meet the eligibility criteria necessary to remain qualified for FAP benefits and to determine their monthly FAP allotment amount.
3. Between this husband and wife, the department verified they received [REDACTED] in gross income (Department Exhibit #1, pgs 5-10).

4. After the department deducted all the mandatory exclusions, disregards and expenses required by policy, they determined this household had [REDACTED] in budgetable net income (Department Exhibit #1, pg 1).
5. When the department compared this amount to the mandatory Food Assistance Tables located in their policy, the department determined this household was qualified to receive [REDACTED] per month in FAP benefits, which was a reduction from last year's amount ([REDACTED]) (Department Exhibit #1, pgs 1-4).
6. On February 1, 2010, the department received claimant's hearing request to protest this reduction.
7. Claimant's hearing was held on September 29, 2010, in the local DHS office.

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 (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 applicable departmental policy states:

Spouses

Spouses who are legally married and live together **must** be in the same group. PEM, Item 212, p. 1.

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.

RETIREMENT, SURVIVORS, AND DISABILITY INSURANCE (RSDI) (AKA SOCIAL SECURITY BENEFITS)

All Programs

RSDI is available to retired and disabled persons, their dependents, and survivors of deceased workers.

Count the gross benefit amount as unearned income. PEM, Item 500, p. 29.

SUPPLEMENTAL SECURITY INCOME (SSI)

All Programs

Michigan SSI benefits include a basic federal benefit and an additional amount paid with state funds. The amount paid by the state and the payment process varies by living arrangement. See PEM 660. For SSI recipients in independent living or household of another, refer to "Current SSA-Issued SSI", "Retroactive SSA-Issued SSI" and "State SSI Payments" below. For SSI recipients in other living arrangements, refer to just "Current SSA-Issued SSI"

and "Retroactive SSA-Issued SSI". PEM, Item 500, p. 31.

Current SSA-Issued SSI

SDA, CDC, AMP and FAP Only

Count the gross amount of current SSA-issued SSI as unearned income. Include SSI withheld to recoup overpayments due to an IPV as defined below.

Always calculate income on a calendar month basis to determine eligibility and benefit amounts. Use income from a month specified in this item for the benefit month being considered.

Budget the entire amount of earned and unearned countable income. Gross countable earned income is reduced by a 20% earned income deduction. Every case is allowed the standard deduction shown in RFT 255. PEM, Item 550, p. 1.

Complete either manually-calculated or LOA2 budget to document expenses every time an expense change is reported. PEM, Item 554, p. 1.

Verification Sources

Acceptable verification sources include, but are **not** limited to:

- . For the household's legal obligation to pay and current obligation:
 - .. court or administrative order
 - .. legally enforceable separation agreement

- . For the household's actual child support and arrearages paid:
 - .. wage withholding statements,
 - .. verification of withholding from unemployment compensation or other unearned income,
 - .. statements from the custodial parent regarding direct payments,

- .. statements from the custodial parent regarding third party payments the non-custodial parent pays or expects to pay on behalf of the custodial parent, or
- .. data obtained from the state's Child Support Enforcement System (CSES)

Note: Documents that are accepted as verification of the households' legal obligation to pay child support and arrearages are **not** acceptable as verification of the households' actual monthly payment. PEM, Item 554, p. 5.

Claimant's hearing was held on September 29, 2010. At hearing, claimant objected to the department's failure to consider the money the federal government (Social Security Administration) is withholding from his wife's disability check each month when determining how much FAP money they are entitled to receive each month.

Unfortunately for claimant, the department is precluded from considering this amount, according to the above-cited policy. Additionally, this Administrative Law Judge recalculated claimant's disputed budget and she finds all calculations were properly made. Consequently, the department had no alternative but to reduce claimant's monthly FAP issuance at review.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly budgeted claimant's FAP allotment at review.

Accordingly, the department's action is AFFIRMED.

/s/
Marlene B. Magyar
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: October 21, 2010

Date Mailed: October 21, 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 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 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.

MBM/db

cc:

