

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: 2010-20440
Issue No: 2026; 3002
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 15, 2010
Barry 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 April 15, 2010. The claimant was represented by attorney [REDACTED] and personally appeared and provided testimony.

ISSUES

1. Did the department properly budget the claimant's Food Assistance Program (FAP) benefits beginning in January, 2010?
2. Did the department properly determine the claimant should be on a Medical Assistance (MA) deductible program in January, 2010?

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 submitted a Redetermination form (DHS-1010) on January 5, 2010.

The claimant indicated on the form that she earned \$300 per week gross as a bartender.

(Department Exhibit 2 – 3)

2. The claimant submitted paycheck stubs with the Redetermination form.

(Department Exhibit 4 – 5)

3. On January 11, 2010, the department conducted a telephone interview with the claimant. The claimant indicated to the department worker that she received tips, which had not been budgeted previously. (Department Exhibit 2 – 4)

4. The department budgeted the claimant's average gross income and \$250 weekly in tips. This resulted in a gross monthly income of \$1724. (Department Exhibit 9)

5. The new budgeted amounts resulted in a FAP benefit of \$289 and a MA deductible of \$191. (Department Exhibit 9 – 11)

6. The claimant was mailed a Notice of Case Action (DHS-1605) on January 25, 2010, informing her that her FAP benefits were reduced to \$289 and her MA had changed to a deductible of \$191. (Department Exhibit 12 – 20)

7. The claimant submitted a hearing request on February 5, 2010.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Department policy states:

**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. BEM, 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 BEM 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). BEM, Item 505, p. 1.

Standard Monthly Amount

Stable and Fluctuating Income

A standard monthly amount must be determined for each income source used in the budget.

Convert stable and fluctuating income that is received more often than monthly to a standard monthly amount. Use one of the following methods:

- . Multiply weekly income by 4.3.
- . Multiply amounts received every two weeks by 2.15.
- . Add amounts received twice a month.

This conversion takes into account fluctuations due to the number of scheduled pays in a month.

Exception: Do not convert income for the month income starts or stops if a full month's income is not expected in that month. Use actual income received or income expected to be received in these months. BEM, Item 505, p. 7.

Wages

All Programs

Wages are the pay an employee receives from another person or organization. Wages include salaries, tips, commissions, bonuses, severance pay and flexible benefits plan funds.

Count an employee's regular wages paid during a vacation or illness as earned income.

Count a wage advance as earnings when the employer actually pays it. Do NOT count the money withheld to offset the advance.

Count wages held by the employer at the request of the employee. However, wages held as a general practice by the employer are NOT income until actually paid.

Exception: Income received in one month that is intended to cover several months (e.g., contractual income) is considered available in each of the months covered by the income.

Count gross wages except as explained in this item for:

- . "EIC"
- . "Flexible Benefits"
- . "Strikers"
- . "Student's Earnings"

BEM, Item 500, p. 15.

FAP ALLOWABLE EXPENSES AND EXPENSE BUDGETING

DEPARTMENT POLICY

This item applies **only** to FAP.

Budget the following expenses to determine net income for FAP eligibility and benefit levels. BEM, Item 554, p. 1.

- . Groups with **no** Senior/Disabled/Veteran (SDV) member:
 - .. dependent care expense up to the maximum in RFT 255, and
 - .. excess shelter up to the maximum in RFT 255, and
 - .. court ordered child support and arrearages paid to non-household members. BEM, Item 554, p. 1.

Housing Expenses

Housing expenses include rent, mortgage, a second mortgage, home equity loan, required condo or maintenance fees, lot rental or other payments including interest leading to ownership of the shelter occupied by the FAP group.

The expense must be a continuing one. Payments that exceed the normal monthly obligation are **not** deductible as a shelter expense unless the payment is necessary to prevent eviction or foreclosure, **and** it has **not** been allowed in a previous FAP budget. Additional expenses for optional charges, i.e., carport, pets, etc. are **not** allowed. BEM, Item 554, p. 9.

MANDATORY HEAT AND UTILITY STANDARD

Heat Separate from Housing Costs

A FAP group which has a heat expense or contributes to the heat separate from rent, mortgage or condominium /maintenance payments, must use the Heat and Utility Standard. This standard covers all heat and utility costs except **actual utility expenses, i.e. installation fees**, etc. (See Actual Utilities in this item.) Do **not** prorate the Heat and Utility Standard even if the heat expense is shared.

FAP groups that qualify for the Heat and Utility Standard **do not** receive any other individual utility standards. BEM, Item 554, p. 11.

Verification

Verify the heat obligation at application and when a change is reported, **except** for groups that own or are purchasing their home. BEM, Item 554, p. 11.

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. BEM 545, pp. 8-9.

Meeting a Deductible

Meeting a deductible means reporting and verifying allowable medical expenses (defined in "**EXHIBIT I**") that equal or exceed the deductible amount for the calendar month tested. BEM, Item 545, p. 9.

The group must report expenses by the last day of the third month following the month for which it wants MA coverage. BAM 130 explains verification and timeliness standards. BEM, Item 545, p. 9.

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. 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 \$300 for non-senior/disabled/veteran households. BEM 500 and 554; Program Reference Manual, Table 255; 7 CFR 273.2.

The only dispute in this case is if the department budgeted the correct amount of tips that the claimant received. Prior to January, 2010, the department had not budgeted any tips for the claimant. The department conducted a redetermination telephone interview with the claimant on January 11, 2010. The department worker testified that the claimant told her during this interview that she received \$250 a week in tips, in addition to her wages. The claimant disputes this and indicated in the hearing that she only makes \$100 - \$150 in tips.

The department worker testified that she asked the claimant multiple times if the \$250 in tips was correct during the interview. The department worker also testified that she documented the amount on the Redetermination form when she conducted the interview. On page 2 of the

Redetermination form, the department worker wrote “per Stephanie receives tips separately from checks \$250/week in tips.” This was written at the time of the telephone interview.

The claimant testified that she remembered telling the department worker that she made \$100 - \$150 in tips each week. The claimant testified that she works every Monday, Wednesday and Friday and every other Saturday. The claimant indicated that she had worked the night before the telephone interview and was tired; but that she was pretty sure she never told the department worker that she received \$250 in tips.

This Administrative Law Judge finds that the department worker is credible in her testimony that the claimant told her \$250 in tips. The department worker did make a notation of the contents of the telephone interview at the time the interview occurred, as is evidenced by the various notations on the Redetermination form. Since this is the only contemporaneous documentation of the conversation, I find it persuasive that it is an accurate portrayal of what the claimant stated.

This Administrative Law Judge requested the claimant’s attorney to submit any tax records that could be used to verify the claimant’s tip amount. The only tax return the claimant’s attorney had in his possession was the 2008 tax return. However, this did not support the claimant’s testimony as the claimant’s tips aren’t even included in the tax return. The only included income is the claimant’s wages from her paycheck stubs. Therefore, the claimant failed to present any evidence to show the department was using inaccurate figures.

It is noted that if the claimant can produce acceptable evidence that refutes her earlier statement that she makes \$250 in tips, she can provide it to the department. The department can then make a new determination based on the evidence provided.

The federal regulations at 7 CFR 273.10 provide standards for the amount of a household's benefits. The department in compliance with the federal regulations has prepared issuance tables which are set forth at Program Reference Manual, Table 260. The issuance table provides that a household with household size and net income of the claimant is eligible for an FAP allotment of \$289.

The goal of the Medicaid program is to ensure that essential health care services are made available to those who otherwise could not afford them. Medicaid is also known as Medical Assistance (MA). BEM 105.

The State of Michigan has set guidelines for income, which determine if an MA group is eligible. Income eligibility exists for the calendar month tested when:

- . There is no excess income, **or**
- . Allowable medical expenses equal or exceed the excess income (under the Deductible Guidelines). BEM 545.

Net income (countable income minus allowable income deductions) must be at or below a certain income limit for eligibility to exist. BEM 105. Income eligibility exists when net income does **not** exceed the Group 2 needs in BEM 544. BEM 166. The protected income level is a set allowance for non-medical need items such as shelter, food and incidental expenses. PRT 240 lists the Group 2 MA protected income levels based on shelter area and fiscal group size. BEM 544. An eligible Medical Assistance group (Group 2 MA) has income the same as or less than the "protected income level" as set forth in the policy contained in the Program Reference Table (PRT). An individual or MA group whose income is in excess of the monthly protected income level is ineligible to receive MA.

However, a MA group may become eligible for assistance under the deductible program. The deductible program is a process, which allows a client with excess income to be eligible for

MA, if sufficient allowable medical expenses are incurred. Each calendar month is a separate deductible period. The fiscal group's monthly excess income is called the deductible amount. Meeting a deductible means reporting and verifying allowable medical expenses that equal or exceed the deductible amount for the calendar month. The MA group must report expenses by the last day of the third month following the month it wants medical coverage. BEM 545; 42 CFR 435.831.

In this case, the claimant's protected income level is \$391. The claimant's countable net income for MA purposes is \$582. Once the protected income level is included, this brings the claimant's monthly MA deductible to \$191.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that

1. The department properly budgeted the claimant's Food Assistance Program (FAP) benefits beginning in January, 2010.
2. The department properly determined the claimant should be on a Medical Assistance (MA) deductible program in January, 2010.

Accordingly, the department's actions are UPHELD. SO ORDERED.

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

Date Signed: May 3, 2010

Date Mailed: May 11, 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 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.

SLK [REDACTED]

cc: [REDACTED]