

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: 2010-2257

Issue No: 3015

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

November 12, 2009

Kalamazoo County DHS

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 November 12, 2009. Claimant was present and testified. Rochelle Cobas, FIS, appeared on behalf of the department.

ISSUE

Did the Department of Human Services (department) properly close claimant's Food Assistance Program (FAP) benefits due to excess income?

FINDINGS OF FACT

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

- (1) On July 14, 2009, claimant applied for FAP benefits for a household of three persons.
- (2) The department gathered income verifications. (Department Exhibit 1, pgs. 11-20)

(3) On October 5, 2009, the department calculated the FAP budget and determined claimant had a net income of \$1,792. (Department Exhibit 1, pgs. 6-7)

(4) On September 1, 2009, the department issued a Case Action Notice denying the FAP benefits due to excess income. (Department Exhibit 2)

(5) On September 17, 2009, claimant filed a Hearing Request to contest the FAP determination.

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 Program Reference Manuals.

The federal regulations define household income to include the gross amount of both earned and unearned income such as self employment earnings and SSI benefits. 7 CFR 273.9(b). The income limits for FAP eligibility vary by household composition factors such as the number of persons in the household. FAP groups may be categorically eligible, an Senior/Disabled/Veteran (SDV) group, or a non SDV group. Depending on the group type, the department may apply a gross income test and/or a net income test. BEM 213 and 550.

FAP groups are categorically eligible based on enhanced authorization for Domestic Violence Prevention Services. BEM 213. Although applicants/recipients are authorized for this service via PUB 859, “Domestic Violence Waivers Informational Brochure”, only households with gross income at or below 200% of the poverty level receive additional authorizations.

Categorically eligible groups automatically meet asset, gross and 100% net income limits for food assistance. BEM 213.

A non-categorically eligible, Senior/Disabled/Veteran (SDV) FAP group must have income below the net income limits. A non-categorically eligible, non-SDV FAP group must have income below the gross and net income limits. BEM 550. An SDV FAP group is one which has an SDV member. A person at least 60 years old is considered a senior. A person is considered disabled if they receive one of the following:

- A federal, state or local public disability retirement pension **and** the disability is considered permanent under the Social Security Act.
- Medicaid, CIMS program codes O or P (which require a disability determination by MRT or Social Security Administration).

Note: Breast and Cervical Cancer Prevention and Treatment Program Medicaid cases are **not** considered disabled.

- Railroad Retirement **and** is eligible for Medicare or meets the Social Security disability criteria.

A person is also considered disabled if they receive or have been certified and awaiting their initial payment for one of the following:

- Social Security disability or blindness benefits.
- Supplemental Security Income (SSI), based on disability or blindness, **even if** based on presumptive eligibility.

A person is considered a Disabled Veteran if they are:

- a veteran of the armed services with a service or non-service connected disability rated or paid as total by the Veterans Administration, or
- a veteran's surviving spouse or child who receives or is approved for VA disability benefits, or is entitled to VA death benefits and has a disability considered permanent under the Social Security Act.. BEM 550.

The income limits, as effective in July 2009, for a household of 3 persons were \$3,052 for the Monthly Categorical Income (200%) Limit, \$1,907 for the Monthly Gross Income (130%) Limit, and \$1,467 for the Monthly Net Income (100%) Limit. RFT 250.

The department is to budget the entire amount of earned and unearned countable income. Gross countable earned income is reduced by a 20% earned income deduction and every case is allowed the standard deduction shown in RFT 255.

In the present case, the department first applied the categorically eligible income limit of \$3,052 for the 200% gross income test. (Department Exhibit 1, pg. 5) The calculated gross income in claimant's case, \$2,406, was below the limit of \$3,052. However, the department then applied a 100% net income limit test and found the household's income exceeded this limit. (Department Exhibit 1, pgs. 6-7) If claimant's household was categorically eligible, then the asset, gross and 100% net income limits for food assistance were automatically met under BEM 213. If claimant's household was not categorically eligible, and not an SDV group, then the 130% monthly gross income limit should have been applied first, and if this was met, then the 100% net income limit would be applied. BEM 550.

The budget submitted by the department also shows that a 100% net income limit of \$1,526 was used. (Department Exhibit 1, pg. 7) This figure is from RFT 250 as effective in October 2009, however, claimant applied for FAP benefits in July 2009 and her application was denied in September 2009. The 100% net income limit in effect in July 2009 was \$1,467. RFT 250. The calculated net income of \$1,792 exceeded the limit, however, it is also noted that no shelter expense was allowed in claimant's case. (Department Exhibit 1, pg. 7)

Based upon the foregoing facts and relevant law, it is found that the department did not properly determine income eligibility for the FAP program. The department has not applied the income limits as effective in July 2009, the month of claimant's application, and has not applied the

correct income tests. Accordingly, the department shall re-instate claimant's July 14, 2009 FAP application and re-determine eligibility.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department did not properly determine income eligibility for the FAP program.

Accordingly, the department's FAP determination is REVERSED. Therefore, it is ORDERED that department re-instate claimant's July 14, 2009 FAP application and re-determine eligibility, awarding benefits to claimant, if appropriate, in accordance with this decision.



Colleen Lack
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: November 30, 2009

Date Mailed: November 30, 2009

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.
mailing date of the rehearing decision.

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