

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: 2010-24368
Issue No: 3015
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 29, 2010
Montcalm 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 29, 2010. The claimant personally appeared and provided testimony, along with his wife, [REDACTED]

ISSUES

1. Did the department properly deny the claimant's Food Assistance Program (FAP) application due to excess income in November, 2009?

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 applied for FAP benefits on or about October 22, 2009.

2. The claimant is self-employed as he owns his own business, [REDACTED]

3. The claimant's wife is employed by [REDACTED]. (Department Exhibit 8)

4. The department denied the claimant's application for FAP benefits on November 18, 2009, indicating that the claimant had excess income to receive FAP benefits.

5. The claimant submitted a hearing request on November 30, 2009.

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).

Department policy states:

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.

Exception: The amount of self-employment income before any deductions is called **total proceeds**. The **gross** amount of self-employment income means the amount after deducting allowable expenses from total proceeds, but before any other deductions. PEM, Item 500, p. 1.

Income remaining after applying the policy in this item is called **countable**.

Count all income that is NOT specifically excluded. PEM, Item 500, p. 1.

Countable Self-Employment Income

Countable earnings from self-employment equal the total proceeds **minus** allowable expenses of producing the income. If allowable expenses exceed the total proceeds, the amount of the loss cannot offset any other income **except** for farm loss amounts. See “Farming Expenses” below. PEM, Item 500, pp. 12-13.

Allowable expenses are the **higher** of:

- . 25% of the total proceeds, **or**
- . actual expenses if the client chooses to claim and verify the expenses. PEM, Item 500, p. 13.

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"

PEM, Item 500, p. 15.

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. PEM 500. The FAP program provides a deduction from earned income of 20% and a deduction for the cost of child care when necessary to enable a FAP household member to work. A standard deduction from income of \$132 is allowed for each household. 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. PEM 500 and 554; Program Reference Manual, Table 255; 7 CFR 273.2.

The claimant must meet both gross and net income tests to receive FAP benefits. The gross income limit for a group size of three is \$1984. RFT 250. The net income limit for a group size of three is \$1526. RFT 250. The department's FAP Gross Income Test documentation from the Bridges computer system shows the claimant's gross income was figured at \$3230, which included the claimant's self-employment income and his wife's earned income. However, this Administrative Law Judge is unable to determine how the department arrived at that figure.

The department provided business receipts from the claimant's business from November and December, 2009. However, the department indicated that the claimant did not turn in receipts initially when the application was denied in November, 2009. In fact, the claimant's receipts included by the department are from November and December, 2009. Clearly, the claimant could not have provided those in October as they had not occurred yet. Thus, it would appear that the claimant did not turn in receipts for the department to take actual expenses at the time of application in October, 2009.

If this is the case, the department should have used the standard 25% self-employment deduction. BEM 500. However, this Administrative Law Judge is unable to find the basis of the self-employment income or deductions the department actually used for the November, 2009 denial of the October 22, 2009 application. The department only produced the Bridges gross income test page that shows the self-employment income was \$2908. However, this Administrative Law Judge is unable to determine how the department arrived at this amount.

Thus, the department has not proven that the denial of the claimant's FAP application was in accordance with department policy.

It is noted that the claimant indicated at the hearing that he did not have any issues with the Medical Assistance (MA) determination. Thus, the MA benefits were not considered in this hearing.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department improperly denied the claimant's FAP application in November, 2009.

Accordingly, the department's determination is REVERSED. The department shall:

1. Reprocess the claimant's October 22, 2009 application, using the income and expense information the claimant had provided at the time of the application or turned in timely prior to the case denial.

2. Issue the claimant a written explanation of the department's actions.

SO ORDERED.

/s/

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

Date Signed: June 9, 2010

Date Mailed: June 14, 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 date of the rehearing decision.

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