

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: 2010-2659

Issue No: 3015

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

November 12, 2009

Eaton 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. [REDACTED] claimant's husband, also appeared and testified. Nellie Harvey, Assistance Payments Worker, 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) Claimant was an ongoing FAP recipient in a household of three persons.

(2) On September 18, 2009, claimant returned the Semi-Annual Contact Report to the department with an attached Profit Loss Statement for August 2009. (Department Exhibit 1, pgs. 5-7)

(3) On October 5, 2009, the department recalculated the FAP budget, utilizing a standard expense allowance instead of the actual expenses listed on the Profit Loss Statement. The department determined claimant no longer qualified for FAP benefits due to gross income in excess of the \$1,984 program limit for a household of 3 persons. (Department Exhibit 1, pgs. 13-15)

(4) On October 5, 2009, the department issued a Case Action Notice that the FAP benefits would close.

(5) On October 12, 2009, claimant filed a Hearing Request to contest the FAP determination.

(6) Due to the timely hearing request, claimant's FAP benefits have remained open pending the hearing outcome. (Department Exhibit 1, pg. 4)

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 and if any group member is disabled. An SDV FAP group is one which has an SDV member. A person is considered disabled if they receive Social Security disability or blindness benefits such as Supplemental Security Income (SSI) based on disability or blindness. BEM 550.

A non-categorically eligible Senior/Disabled/Veteran (SDV) FAP group must have income below the net income limits. BEM 550. The monthly net income limit for a non-categorically eligible, SDV household of three persons is \$1,526. A non-categorically eligible, non Senior/Disabled/Veteran (SDV) FAP group must have income below the gross income limits. BEM 550. The monthly gross income limit for a non-categorically eligible, non-SDV household of three persons is \$1984. 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. For self-employment earnings, countable income from self-employment equals the total proceeds minus allowable expenses of producing the income. If allowable expenses exceed the total proceeds, the amount of the loss cannot off set any other income except for Farm Loss amounts. Allowable expenses are the higher of 25% of the total proceeds, or actual expenses if the client chooses to claim and verify the expenses. BEM 500.

In the present case, claimant was an ongoing FAP recipient whose case was due for a periodic review. On September 18, 2009, the claimant returned the Semi Annual Contact Report attaching a Profit Loss Statement for the month of August 2009. (Department Exhibit 1, pgs. 5-7) On October 5, 2009, the department recalculated the FAP budget, utilizing the standard 25% deduction instead of the actual expenses reported by claimant on the Profit Loss Statement, and determined claimant had countable gross income of \$3135. (Department Exhibit 1, pg. 13) Therefore, the department determined claimant was no longer eligible for FIP benefits because

the gross income limit for a household of three persons is \$1,984. (Hearing Summary and Department Exhibit 1, pg. 13)

In reaching this determination, the department applied the wrong income test. The department applied the gross income test, which is to be used for non-SDV groups. However, the documentation submitted clearly shows that the SSI income is a federal disability benefit. (Department Exhibit 1, pg. 3) Accordingly, one of the household members was disabled. Under BEM 550 as noted above, a group is considered a SDV group if one of the members is disabled. Accordingly, the department should have used the net income test, which is applied to SDV groups. The department improperly proposes a closure due to income in excess of the gross income test.

The department's MA budget also calculated a net income of \$1,814. Claimant's calculated net income exceeds the program limit of \$1,526 for a household of three persons. (Department Exhibit 1, pg. 15) However, the department did not properly calculate the FAP income budget. Under BEM 500, as noted above, the actual self-employment expenses can be utilized if they are higher than 25% of the total proceeds. The department testified the actual expenses were not utilized because claimant did not provide receipts for the expenses. Claimant did provide the Profit Loss Statement as verification, which he testified is a form utilized in bankruptcy court. It is noted that this form is signed under the penalty of perjury. (Department Exhibit 1, pg. 7) The department also testified that in the past, they did accept this form as sufficient verification from claimant. Accordingly, the department erred by utilizing a standard expense allowance instead of the higher actual expenses listed on the August 2009 Profit Loss Statement. Claimant did provide verification of the self employment expenses on a bankruptcy court form, which was signed under penalty of perjury.

Lastly, the claimant testified that business in August 2009 was unusually high. Claimant has provided additional documentation, including the 2008 tax returns and Profit Loss

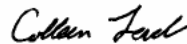
Statements for additional months to verify the more typical amount of the monthly self employment income. (Claimant Exhibit 2) BEM 505 describes how the department should budget fluctuating income, including using an average of income received over several months and that a case should not be closed for temporary ineligibility if the conditions resulting in excess income are not expected to recur in the following month.

Based upon the foregoing facts and relevant law, it is found that the department improperly applied the gross income test and did not properly calculate the FAP income budget. Accordingly, the claimant's FAP benefits shall remain open and the department shall re-determine FAP eligibility retroactive to October 2009.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department did not apply the correct income test and did not properly calculate the FAP income budget.

Accordingly, the department's FAP determination is REVERSED. Therefore, it is ORDERED that claimant's FAP benefits remain open. It is further ORDERED that the department re-determine FAP eligibility retroactive to October 2009, 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 19, 2009

Date Mailed: November 20, 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 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 mailing date of the rehearing decision.

CL/cv

cc:

