

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

██████████

Claimant,

Reg. No.: 201027022

Issue No.: 2013, 3026

Case No.: ██████████

Load No.: ██████████

Hearing Date:

May 17, 2010

Oakland County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

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 on February 11, 2010. After due notice, a telephone hearing was conducted from Detroit, Michigan on May 17, 2010. The Claimant appeared and testified. Claimant's wife and co-claimant, ██████████, was also present. ██████████, APW, and ██████████, FIS, appeared for the Department. ██████████, ES, sat in for the Department but did not testify.

ISSUE

1. Whether the Department properly considered Claimant's self employment expenses pursuant to Judge Jonathan Owens 10/20/09 Decision and Order.
2. Whether the Department properly denied Claimant's 6/4/08 Child Development Care ("CDC") application following receipt of Claimant's signed 2008 tax return on 12/15/09?

3. Whether the Department properly terminated Claimant's Food Assistance Program ("FAP") benefits effective 12/1/09 for failure to turn in verifications regarding self-employment?
4. Whether the Department properly terminated Medical Assistance ("MA") benefits under the Healthy Kids program for the Claimants' children effective 12/1/09 for failure to submit verifications regarding self-employment?

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 and CDC and MA benefits under Healthy Kids on June 4, 2008.
2. Claimant was granted FAP and MA benefits but denied CDC benefits based on excess income.
3. On October 20, 2009, following an October 12, 2009 hearing, Judge Jonathan Owens Ordered that the Department initiate a review of the Claimant's 2008 application, secure verification of expenses (regarding self employment income) as allowed by policy and allow Claimant time to provide the necessary documentation.
4. On 10/14/09 a redetermination packet was sent out to Claimant with an appointment date of 11/12/09. (Exhibit 1, p. 11). The Appointment was subsequently adjourned.

5. Claimant testified that on 10/15/09, he finalized his 2008 taxes including self-employment income and expenses. (Exhibit 1, p. 15).
6. On 10/26/09, a verification checklist was mailed to Claimant requesting “self-employment income verification for all months between June 2008 to October 2009.” Also requested was “income verification from all assets for all months between June 2008 to October 2009.” (Exhibit 1, p. 61). The due date was 11/5/09.
7. On 11/9/09, Claimant attempted to fax documentation including statements regarding income producing investments to the Department; however, the faxes did not go through. (Exhibit A3, last few pages).
8. On 11/10/09, Claimant sent the same documents by [REDACTED]. (Exhibit A3).
9. On 11/19/09, the Department issued a notice that Claimants’ childrens’ MA benefits would be cut off at the end of November with the exception of the youngest child who was under the age of one year old for failure to return the redetermination form. (Exhibit 1, pp. 48-56).
10. Claimants’ children’s MA benefits were terminated effective 12/1/09.
11. On 12/15/09, Claimant submitted a copy of his signed income tax return including a self employment income & expense statement for the 2008 tax year. (Exhibit A6). The information submitted does not include any receipts for expenses claimed.
12. Claimant testified that he sold an [REDACTED] bond in 2009 and reported it as a capital gain. Claimant did not provide any information regarding the

amount of the sale. Nor did Claimant provide any information regarding \$90,000.00 that appeared in a [REDACTED] (now [REDACTED]) account in February, 2009 as referenced by Judge Owens.

13. Claimant's FAP benefits ceased in February, 2009.
14. On February 11, 2010 the Department received the Claimant's hearing request protesting the termination of "Medical and any other program covered by this notice."

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"), formerly 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/Program Administrative Manual (BAM/PAM), the Bridges/Program Eligibility Manual (BEM/PEM), and the Reference Tables (RFT).

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 (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges/Program Administrative Manual (BAM/PAM), the Bridges/Program Eligibility Manual (BEM/PEM) and the Reference Tables (RFT).

The Child Development and Care Program is established by Titles IVA, IVE and XX of the Social Security Act, the Child Care and Development Block Grant of 1990, and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The program is implemented by Title 45 of the Code of Federal Regulations, Parts 98 and 99. The Department of Human Services (formerly known as the Family Independence Agency) provides services to adults and children pursuant to MCL 400.14(1) and MAC R 400.5001-5015. Department policies are contained in the Bridges/Program Administrative Manual (BAM/PAM), the Bridges/Program Eligibility Manual (BEM/PEM) and the Reference Tables (RFT).

A. Self Employment

Countable income from self-employment equals the total proceeds minus allowable expenses of producing the income. Allowable expenses are the higher of 25 percent of the total proceeds, or actual expenses if the client chooses to claim and verify the expenses. Allowable expenses include all of the following:

- Identifiable expenses of labor, stock, raw material, seed, fertilizer, etc.
- Interest and principal on loans for equipment, real estate or income-producing property.
- Insurance premiums on loans for equipment, real estate and other income-producing property.
- Taxes paid on income-producing property.
- Transportation costs while on the job (example: fuel).
- Purchase of capital equipment.
- A child care provider's cost of meals for children. Do not allow costs for the provider's own children.
- Any other identifiable expense of producing self-employment income except those listed below.

BEM 502, p. 3. The following are not considered self-employment expenses:

- A net loss from a previous period.
- Federal, state and local income taxes.
- Personal entertainment or other individual business expenses.
- Money set aside for retirement.
- Depreciation on equipment, real estate or other capital investments.

BEM 502, p. 4.

B. Income from Sale of Bonds

For FAP, Bridges treats lump-sums and accumulated benefits as assets starting the month received. BEM 500, p. 5. For MA, Lump-sums and accumulated benefits are income in the month received. Income may be countable or excluded. Funds cannot be counted as both income and as assets in the same month. BEM 500, p. 4. For FIP, SDA, G2U, G2C, SSI-related MA and AMP, a bond is considered an investment. The value of the investment is the amount the asset is selling for. If Security was not paid for in full at the time of the purchase (bought on a margin), the securities firm has made a loan to the buyer. The Department is instructed in that situation to deduct the balance owed from the price if there is written proof that the balance owed must be repaid when the security is sold. BEM 400, p. 15. Acceptable Verification for stocks and bonds includes a written statement from a broker or company or a listing in a current newspaper. BEM 400, p. 37.

C. Redetermination and Verification

Benefits will stop at the end of the benefit period unless a redetermination is completed and a new benefit period is certified. If the client does not complete the redetermination process, the benefit period is allowed to expire. The redetermination process begins when the client files a DHS-1171, Assistance Application, DHS-1010, Redetermination, DHS-1171, Filing Form, or DHS-2063B, Food Assistance Benefits Redetermination Filing Record. BAM 210, p. 2.

Bridges generates a redetermination packet to the client three days prior to the negative action cut-off date in the month before the redetermination is due. This allows time to process the redetermination before the end of the redetermination month. The FAP redetermination must be completed by the end of the current benefit period so that the client can receive uninterrupted benefits by the normal issuance date. BAM 210, p. 12. In order to receive uninterrupted benefits, (benefits available on their scheduled issuance date) the client must file either a DHS-1010, Redetermination, DHS-1171, Assistance Application, or a DHS-2063B, Continuing Food Assistance Benefits, by the 15th of the redetermination month. BAM 210, p. 9.

Clients must cooperate with the local office in determining initial and ongoing eligibility to include the completion of the necessary forms. BAM 105, p. 5. Verification means documentation or other evidence to establish the accuracy of the client's verbal or written statements. BAM 130, p. 1. Verification means documentation or other evidence to establish the accuracy of the client's verbal or written statements. Verifications must be obtained when:

- Required by policy. BEM items specify which factors and under what circumstances verification is required.
- Required as a local office option. The requirement must be applied the same for every client. Local requirements may not be imposed for MA, TMA-Plus or AMP.
- Information regarding an eligibility factor is unclear, inconsistent, incomplete or contradictory. The questionable information might be from the client or a third party.

Id. Verification is usually required at application/redetermination and for a reported change affecting eligibility or benefit level. Nonpermanent documents must be current.

Current means that income documents must correspond to the period used to determine eligibility or benefit amount. BAM 130, p. 1

Clients are allowed 10 calendar days (or other time limit specified in policy) to provide the requested verifications. BAM 130, p. 4. A negative action notice should be sent when the client indicates a refusal to provide the verification or the time period provided has lapsed and the client has not made a reasonable effort to provide it.

D. Analysis

In the subject case, while the Department acknowledged that the programs at issue do not have an asset limit, they are still need based and accordingly, it is necessary to determine Claimant's income to determine eligibility. In the course of obtaining Claimant's income information for FAP and CDC benefits, the Department was alerted to various unclear or inconsistent income issues that needed clarification:

1. Claimant has a significant number of investments that are income producing. The Department was entitled to determine the amount of income from the investments.
2. Claimant is self-employed with gross receipts of \$89,617.00 and claiming expenses of \$63,649.00. Especially as the business expenses comprise 71% of the gross receipts, the Department was entitled to actual receipts of monthly expenses.
3. Claimant testified that he sold [REDACTED] bonds. Under the applicable regulations, the sale of bonds is considered a lump sum income in the month received for MA purposes.
4. Judge Owens questioned the [REDACTED] (now [REDACTED]) account which had a zero balance in January, 2009 and over \$90,000.00 in February, 2009.

Accordingly, pursuant to BAM 130, the Department was justified in requesting additional verification in order to clarify the inconsistencies and complete Claimant's testimony and existing documentation. The Department correctly sent Claimant a redetermination

packet and verification checklist with a due date of 11/5/09 and telephone hearing scheduled following on 11/12/09.

The Administrative Law Judge finds that Claimant submitted his redetermination packet of 4 pages and 18 supplemental pages of investment income upon the Department on 11/10/09 via Federal Express. Claimant did not submit his signed 2008 tax return with listed self employment expenses until 12/15/09. While the Department had similar information in conjunction with the previous Administrative hearing, it was attached to an unfiled tax return. Accordingly, the undersigned finds that the Department did not receive the completed tax return information until 12/15/09 which was after the redetermination deadline. Claimant also had more than a month after Judge Owens's Decision and Order was issued to submit the verifications before the benefit period closed. This is greater than the 10 days normally allotted for verifications to be returned and is found to be reasonable by this Administrative Law Judge.

Even if the Department had received the completed, signed 2008 income tax returns timely, the information contained within was insufficient for the Department to determine eligibility for benefits. Per BAM 130, the tax return was not *current* self-employment information as it was 11 months old and did not cover the majority of the current benefit period. Furthermore, the tax return did not include any receipts of expenses. Presumably Claimant has the receipts for expenses in his possession as they are necessary should he be audited by the IRS. Per BEM 502, actual expenses are allowed for consideration in determining self employment income only upon verification of the expenses. Finally, the tax return provided to the Department did not contain any information regarding the sale of [REDACTED] bonds. Claimant testified that he counted a

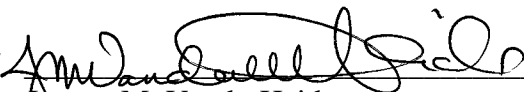
capital gain as a result of the sale but did not report anywhere the amount of the bond which was sold. The Department had a valid question about whether this bond was considered a lump sum which should be counted as income in the month received.

Therefore, it is found that the Department acted in accordance with department policy resulting in denying Claimant's 2008 CDC application and in terminating FAP and MA benefits. Claimant is entitled to reapply for benefits at any time although current verification of income and expenses will again be requested by the Department if Claimant chooses to claim actual expenses for income eligibility.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the Department properly denied the Claimant CDC benefits and properly terminated FAP and MA benefits based on lack of verification of self employment expenses and income.

Accordingly, it is Ordered that the Department's denial of Claimant's 6/4/08 CDC application and the termination of Claimant's FAP and MA benefits effective 12/1/09 are hereby AFFIRMED.

/s/ 
Jeanne M. VanderHeide
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: June 7, 2010

Date Mailed: June 7, 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.

JV/htw

cc:

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