

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: 2010-29299  
Issue No: 3002  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
April 27, 2010  
Kent 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 27, 2010. The claimant personally appeared and provided testimony, along with her husband, [REDACTED]

ISSUE

Did the department properly budget the claimant's Food Assistance Program (FAP) benefits?

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 Semi-Annual Contact Report (DHS-1046) on February 19, 2010. (Department Exhibit 1 – 2)

2. The claimant submitted an unemployment claim information sheet with the Redetermination form to show that she was receiving unemployment compensation benefits (UCB). (Department Exhibit 3)

3. The claimant also submitted six paycheck stubs from her husband's employment. (Department Exhibit 4 – 9)

4. A UCB Search was conducted on March 5, 2010, by the department. The search showed the claimant was receiving \$488 bi-weekly in UCB. (Department Exhibit 15 – 17)

5. The claimant's FAP budget includes \$609 in housing expenses and the \$555 heating/utility standard. (Department Exhibit 21)

6. The department had not been budgeting the claimant's UCB prior to March, 2010. When the UCB income was added, the claimant's FAP benefit amount was reduced to \$84. (Department Exhibit 23)

7. The claimant was mailed a Notice of Case Action (DHS-1605) informing her of the decrease on February 27, 2010. (Department Exhibit 37 – 41)

8. The claimant submitted a hearing request on March 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).

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. BEM, Item 500, p. 1.

### **UNEMPLOYMENT BENEFITS**

#### **All Programs**

Unemployment benefits include:

- . Unemployment Compensation Benefits (UCB) available through the Michigan Unemployment Agency and comparable agencies in other states, and
- . Supplemental Unemployment Benefits (SUB pay) from an employer or other source.

Count the gross amount as unearned income. BEM, Item 500, p. 34.

#### **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.

### **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.

**Fluctuating income:** Income received on a regular schedule but that varies from check to check, such as a waitress' income whose hours vary each week. BEM, Item 505, p. 1.

## **DETERMINING BUDGETABLE INCOME**

### **FIP, SDA, CDC, FAP**

Determine budgetable income using countable, available income for the benefit month being processed. BEM, Item 505, p. 2.

#### **Past Months**

Use actual gross income amounts received for past month benefits, converting to a standard monthly amount, when appropriate. See Standard Monthly Amount in this item.

**Exception:** Prospective income may be used for past month determinations when:

- . income verification was requested and received, and
- . payments were received by the client after verifications were submitted, and
- . there are no known changes in the income being prospected. BEM, Item 505, p. 2.

#### **Current and Future Months**

Prospect income using a “best estimate” of income expected to be received during the month (or already received). Seek input from the client to establish an estimate, whenever possible. BEM, Item 505, p. 2.

To prospect income, you will need to know:

- . the type of income and the frequency it is received (e.g., weekly),
- . the day(s) of the week paid,
- . the date(s) paid, and
- . the gross income amount received or expected to be received on each pay date. BEM, Item 505, p. 2.

## **BUDGETING INCOME**

Use the following guidelines to budget income.

### **Non-Child Support Income**

#### Using Past Income

Use past income to prospect income for the future unless changes are expected:

- . Use income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month.

**Note:** The 30-day period used can begin up to 30 days before the interview date or the date the information was requested.

**Discard** a pay from the past 30 days if it is unusual and does not reflect the normal, expected pay amounts. Document which pay is being discarded and why. For example, the client worked overtime for one week and it is not expected to recur.

- . Use income from the past 60 or 90 days for fluctuating or irregular income, if:
  - .. the past 30 days is not a good indicator of future income, and

- ..
- .. the fluctuations of income during the past 60 or 90 days appear to accurately reflect the income that is expected to be received in the benefit month.

**Note:** The 60 or 90-day period used can begin up to 60 or 90 days before the interview date or the date the information was requested. BEM, Item 505, pp. 5-6.

### **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.

### **INCOME DEDUCTIONS**

#### **FIP and SDA Only**

Income deductions are available at both the member and the group level. Apply deductions in the order they are presented in this item. BEM, Item 518, p. 4.

#### **Earned Income Disregard**

Deduct \$200 from each person's countable earnings. Then deduct an additional 20% of each person's remaining earnings. The total disregard cannot exceed countable earnings. Apply this disregard

separately to each program group member's earned income. BEM, Item 518, p. 4.

A non-categorically eligible, non-SDV FS group must have income below the gross and net income limits. BEM, Item 550, p. 1.

Use **only** available, countable income to determine eligibility. BEM 500 defines countable income. BEM 505 defines available income and income change processing. This item describes income budgeting policy. BEM, Item 550, p. 1.

**Always** calculate income on a calendar month basis to determine eligibility and benefit amounts. Use income from a month specified in this item for the benefit month being considered.

Budget the entire amount of earned and unearned countable income. Gross countable earned income is reduced by a 20% earned income deduction. Every case is allowed the standard deduction shown in RFT 255. BEM, Item 550, 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.

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. 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 \$144 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 department is accurately budgeting the claimant's rent expense of \$609 and heating/utility deduction of \$555.

In this case, the Administrative Law Judge has reviewed the FAP budget and finds that the department did not properly compute the claimants' net income. The department indicated in this hearing that [REDACTED] UCB income was not being budgeted properly due to a problem with the BRIDGES computer system. The budget shows \$941 in budgeted UCB income. This Administrative Law Judge does find that the UCB income is incorrect, as stated by the department. As the claimant receives \$488 biweekly, it should be multiplied by 2.15, which would equal unearned income of \$1049.20.

Further, this Administrative Law Judge is unable to determine how the department arrived at [REDACTED] income amount. This Administrative Law Judge averaged [REDACTED] paycheck amounts and was unable to replicate the department's figure of \$1596. [REDACTED] is paid weekly. If the department used the most recent 30 days of income

information (pay periods of January 16; January 23; January 30; and February 6, 2010), the averaged weekly income would be \$341.1575. Department policy requires the department to multiply that amount by 4.3 (as the claimant is paid weekly), for a total earned income of \$1466.98. This is well below the department's budgeted amount of \$1596. Thus, it appears that the department is not budgeting enough UCB income and budgeting too much earned income.

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. Once the department figures the correct net income, the department can determine the correct FAP issuance in accordance with these regulations.

#### DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department improperly budgeted the claimant's FAP benefits.

Accordingly, the department's actions are REVERSED. The department shall:

1. Initiate another determination of the claimant's FAP benefits, ensuring that the claimants' employment income and UCB are budgeted properly.
2. Mail the claimants a new Notice of Case Action to inform them of the outcome of the new determination of FAP benefits.

SO ORDERED.

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

Date Signed: May 4, 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 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.

SLK [REDACTED]

cc: [REDACTED]