

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: 20102943
Issue No: 3002
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 19, 2009
Wayne 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. After due notice, a telephone hearing was conducted on November 19, 2009. The Claimant appeared and testified along with his wife, [REDACTED]. Crystal Jackson, ES and Tina Seals, FIM, appeared on behalf of the Department.

ISSUE

Whether the Department properly computed and denied the Claimant's Food Assistance ("FAP") benefits effective October 5, 2009.

FINDINGS OF FACT

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

1. The Claimant applied for FAP benefits on May 15, 2009.

2. The Department misplaced Claimant's application and a Food Assistance Budget was not compiled dated October 5, 2009. (Exhibit 1, 4-5).
3. Claimant testified that until two weeks ago, he had a household group of four (4) persons.
4. Claimant produced earnings statements from his wife showing gross earned income of \$320.00/biweekly or \$688.00/month.
5. Claimant testified that the above reference earned income followed the school year and that his wife was not working from [REDACTED].
6. Claimant further testified that his wife began a second job on [REDACTED] earning \$188.00/week. (Exhibit 2).
7. Claimant receives Unemployment Compensation in the amount of \$1,664.10 per month.
8. Claimant testified that in May of 2009 he received rental income for three rental properties in the total amount of \$1,730.00 per month.
9. Claimant testified that his tenants on one property did not pay rent of \$580.00 for the months of May or June and that an eviction notice was posted on the tenant's door causing the tenants to move as of [REDACTED]. (Exhibit 3).
10. Claimant testified that new tenants moved in and began paying rent on 10/10/09.
11. Claimant testified that he has monthly shelter obligations of a mortgage payment in the amount of \$632.42, property taxes of \$1700.00/year and home owners insurance of \$701.00/year.
12. The Claimant testified that he is responsible for all utilities in his home.

13. Following the October 5, 2009 budget, monthly FAP benefits were denied for excess income. (Exhibit 1, p. 3).
14. Claimant objected to the FAP calculation and denial and filed this appeal. The Department received the Claimant's Request for Hearing on October 7, 2009.

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 Program Administrative Manual ("PAM"), the Program Eligibility Manual ("PEM"), and the Program Reference Manual ("PRM").

The federal regulations define household income to include all earned income. 7 CFR 273.9(b). All monthly income must be converted to a nonfluctuating monthly amount. Only 80% of earned income is counted in determining FAP benefits. PEM 550. In determining self employment income, including income from rental properties, deductions are allowed for interest and principal on loans, insurance premiums and taxes paid on income-producing property. (PEM 500, p. 14).

Under 7 CFR 273.9, as amended, \$135.00 is deducted from the gross income of FAP recipients in determining FAP grants. Unearned income includes unemployment compensation (PEM 500). Under 7 CFR 273.9 deductions for excess shelter are also made. PEM 554. Id. There is a standard heat and utility deduction as well as a standard deduction for telephone bills.

Id. The standard deductions are a set amount that is applied regardless of the actual expenses incurred by the Claimant.

The Department is required to process applications within the standard of care set forth in the applicable regulations. The standard of care for FAP benefits is 30 days for non expedited cases. PAM 115, p. 12. As the Department acknowledged that the application was misplaced, the standard of care was not met in this case.

In the subject case, the Claimant was not notified until 10/5/09 that his application was denied. Claimant testified credibly that he attempted to contact the Department regarding his FAP application prior to October; however, Claimant did not receive a response to his phone calls. When the application was processed on 10/5/09, no deductions were made for mortgage, tax and insurance costs on the rental properties. Furthermore, the budget presented as evidence by the Department does not show the inclusion of shelter costs for the Claimant's primary residence. In addition, the Administrative Law Judge finds that there was a loss of rental income as of the date that the tenants vacated the property on [REDACTED]. Claimant is entitled to recoup money damages from the tenants for the unpaid rent for the months of May and June.

Accordingly, the Department shall recalculate Claimant's eligibility utilizing the facts brought forth in the testimony above for the months of May-October, 2009. Claimant shall provide any necessary verification for shelter, income and rental property costs as requested pursuant to Department policy.

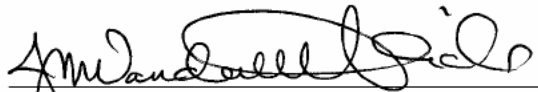
DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the Department failed to meet the standard of promptness in processing the Claimant 5/15/09 FAP application.

Furthermore, the Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the Department improperly calculated the Claimant's FAP eligibility.

Accordingly, it is ORDERED:

1. The Department's 10/5/09 FAP eligibility determination is REVERSED.
2. The Department shall reprocess Claimant's FAP eligibility from May 15, 2009 – October, 2009 using the facts set forth above including
 - a. Deductions allowed for rental properties of mortgage, insurance and taxes;
 - b. Decrease in earned income in June of 2009;
 - c. Increase in earned income as of 8/25/09;
 - d. Decrease in rental income as of July 24, 2009; and
 - e. Shelter deductions for Claimant's primary residence to include mortgage, taxes, insurance and utilities.
3. Once eligibility is determined for the months, May – October, 2009, the Department shall supplement Claimant with any lost benefits he was otherwise entitled to receive.
4. Claimant shall provide the Department with verifications as requested pursuant to Department policy.



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

Date Signed: 12/21/09

Date Mailed: 12/23/09

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.

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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/dj

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