

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: 2010-29710
Issue No: 3008
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 4, 2010
Bay County DHS

ADMINISTRATIVE LAW JUDGE: Kevin Scully

HEARING DECISION

This matter is before the undersigned Administrative Law Judge by authority of MCL 400.9 and MCL 400.37. Claimant's request for a hearing was received on July 31, 2009. After due notice, a telephone hearing was held on Tuesday, May 4, 2010.

ISSUE

Whether the Department of Human Services (Department) properly determined the Claimant's Food Assistance Program (FAP) eligibility?

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 received FAP benefits.
- (2) The Department sent the Claimant a Semi-Annual Contact Report on June 2, 2009, with a due date of July 1, 2009.

(3) The Claimant returned the Semi-Annual Contact Report along with verification forms, and the Department received it on June 22, 2009.

(4) The Department gave notice to the Claimant on July 28, 2009 that her FAP benefits on would be terminated as of August 1, 2009.

(5) The Department received the Claimant's request for a hearing on July 31, 2009, protesting the termination of her FAP benefits.

CONCLUSIONS OF LAW

The Food Assistance Program (FAP) (formerly known as the Food Stamp 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), Reference Table Manual (RFT), and the Bridges Reference Manual (BRM).

Clients must cooperate with the local office in determining initial and ongoing eligibility. This includes the completion of 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 is usually required at application/redetermination and for a reported change affecting eligibility or benefit level when it is required by policy, required as a local office option, or information regarding an eligibility factor is unclear, inconsistent, incomplete, or contradictory. BAM 130, p. 1. The Department uses documents, collateral contacts, or home calls to verify information. BAM 130, p. 1. A collateral contact is a direct contact with a person, organization, or agency to verify information from the client. BAM 130,

p. 2. When documentation is not available, or clarification is needed, collateral contact may be necessary. BAM 130, p. 2.

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 offset any other income except for farm loss amounts. BEM 502. 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. BEM 502.

Expenses that are not allowable include the following:

- 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.

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. BEM 502. Self-employment expenses need to be verified to be applied to a client's FAP budget. Allowable verification documents include:

- Business receipts.
- Accounting or other business records.
- Income tax return.
- Other acceptable method that provides needed information.
- DHS-431, Self-Employment Statement. BEM 502.

The Department sent the Claimant a redetermination form, and she returned it with verification documents to the Department prior to the due date of July 1, 2009. However, the verification documents that the Department received were insufficient proof of self-employment expenses because many of the checks were written to "cash." Copies of these cancelled checks may have been sufficient if the Claimant had submitted expense invoices to verify how the money was spent.

The Claimant testified that many of the vendors that she does business with in the course of running her business would not accept a check and that this makes it more difficult for Claimant to submit business expenses to the Department. However, Departmental policy has established that the only alternative to the burdensome task of self-employment expense verification is to reduce self-employment income by a flat 25%. The Department did apply the flat 25% expenses standard to the Claimant's income in this case, but the result was that the Claimant was ineligible due to excess income.

The Claimant argued that the Department's policy is unnecessarily harsh when applied to her situation. However, the Claimant's complaint is not within the scope of authority delegated to this Administrative Law Judge because Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations or overrule or make exceptions to the department policy set out in the program manuals.

Furthermore, administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940).

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department established that it properly determined the Claimant's FAP eligibility.

The Department's FAP eligibility determination is AFFIRMED. It is SO ORDERED.

/s/ _____
Kevin Scully
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: May 17, 2010

Date Mailed: May 18, 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.

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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.

KS/vc

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