

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: 2010-32176
Issue No: 3026
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 25, 2010
Isabella 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 April 13, 2010. After due notice, a telephone hearing was held on Tuesday, May 25, 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 receives FAP benefits.
- (2) The Department completed a FAP budget on April 6, 2010, which determined that the Claimant was entitled to a monthly FAP allotment of [REDACTED]. Department Exhibit B

(3) The Claimant received self-employment income for February 2010, in the gross amount of [REDACTED]. Department Exhibit D.

(4) The Claimant's self-employment expenses that he could deduct from his income totaled [REDACTED] for the month of February 2010. Department Exhibit D.

(5) The Department received the Claimant's request for a hearing on April 13, 2010, protesting the reduction 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).

For FAP purposes, all earned and unearned income available to the Claimant is countable. Earned income means income received from another person or organization or from self-employment for duties for duties that were performed for compensation or profit. Unearned income means all income that is not earned, including but not limited to funds received from the Family Independence Program (FIP), State Disability Assistance (SDA), Child Development and Care (CDC), Medicaid (MA), Social Security Benefits (RSDI/SSI), Veterans Administration (VA), Unemployment Compensation Benefits (UCB), Adult Medical Program (AMA), alimony, and child support payments. The amount counted may be fore than the client actually receives because the gross amount is used prior to any deductions. BEM 500.

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.
- Any other identifiable expense of producing self-employment income except those listed below.

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.

The Department conducted a semi-annual review of the Claimant's FAP benefits on April 6, 2010. The Department determined that the Claimant had self-employment income of [REDACTED]. The Claimant's group also receives monthly Retirement, Survivor's and Disability Insurance (RSDI) in the gross monthly amount of [REDACTED]. The total of the Claimant's income is reduced by 20% of the earned income, the standard deduction of [REDACTED], and the Claimant's child support expenses of [REDACTED], to determine the Claimant's adjusted gross income of [REDACTED]. The Claimant's excess shelter deduction of [REDACTED] is determined by adding her monthly housing expense to the [REDACTED] heat and utility standard under the Low Income Home Energy Assistance Program, and subtracting half of her adjusted gross income. A net income of [REDACTED] is determined by subtracting the excess shelter deduction from the adjusted gross income.

The Department determined the Claimant's self-employment income by subtracting expenses allowed by policy from her gross self-employment income. The Claimant received a monthly gross income of [REDACTED] in February of 2010.

2/26/2010	2/13/2010	2/20/2010	2/27/2010	Total
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

The Department determined that the Claimant had allowable self-employment expenses of [REDACTED] for February of 2010.

	2/26/2010	2/13/2010	2/20/2010	2/27/2010
Fuel	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Repairs	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Insurance	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Lease payment	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Plates	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Total	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

The Department did not allow deductions for advances, Comcheck fees, direct deposit fees, insurance catch-up, and PrePass fees.

Subtracting [REDACTED] from [REDACTED] leaves the Claimant with a net self-employment of [REDACTED], which is lower than the income entered into the Claimant's FAP budget. If one lease payment of [REDACTED] is removed from the Claimant's expenses, this would produce an income of [REDACTED], which corresponds to the income applied to her FAP budget. Underreporting the Claimant's expenses has a negative impact on her FAP allotment.

The Claimant argued that the Department should permit her to use her insurance catch-up expenses when determining her net self-employment income. The Department's policy on self-employment income, BEM 502, does allow clients to deduct insurance premiums as expenses from self-employment income. In this case, the Department did not permit the Claimant to use insurance catch-up as an expense for FAP purposes because the expense was for insurance coverage received the previous year. The policy allows any identifiable expense of producing self-employment income except those specifically excluded. The list of self-employment expense exclusions in policy does not include expenses deferred from the previous year.

The Department does not permit self-employed FAP recipients to deduct expenses from their income more than once. If the Claimant had received credit on his FAP budget for the previous year for insurance premiums, he is not permitted to take an additional credit during the current year for the same expense. Evidence was not presented at the hearing concerning whether the Claimant received credit for self-employment expenses for insurance on the previous year's FAP budget.

The Department has not established that it properly determined the Claimant's income. The evidence presented at the hearing indicates that the Department did not consider all of the Claimant's expenses in its budget calculations. The Department did not include one lease

payment, or establish that Claimant's insurance catch-up payments cannot be used when determining the Claimant's FAP eligibility.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department failed to establish that it properly determined the Claimant's self-employment income.

Accordingly, the Department's FAP eligibility determination is REVERSED. It is further ORDERED that the Department shall:

- (1) Determine the Claimant's eligibility for FAP benefits as of April 1, 2010.
- (2) Issue the Claimant any retroactive benefits she may be eligible to receive, if any.
- (3) Allow the Claimant to provide verification that may clarify whether his insurance catch-up expenses are an identifiable expense of producing self-employment income.
- (4) Provide the Claimant with written notice of the Department's eligibility determinations.

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

Date Signed: June 24, 2010

Date Mailed: June 24, 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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