

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: 2010-32702
Issue No: 3003
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 25, 2010
Ingham 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 May 25, 2010. The claimant personally appeared and provided testimony. The hearing record was left open until June 8, 2010, to allow the department to submit additional information.

ISSUE

Did the department properly budget the claimant's Food Assistance Program (FAP) benefits in March and April, 2010?

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 was a FAP recipient with two sources of employment income, through [REDACTED].

2. The department had completed a State Emergency Relief (SER) payment for the first month of rent for the claimant's new apartment. However, the department had no updated the amount of rent the claimant was paying in her FAP budget, so the department went back to September, 2009 and included the new rent amount in the budget. (Department Exhibit 2)

3. The department budgeted a loss of employment with Hope Network on April 29, 2010, but made it effective back to March 4, 2010, which resulted in a supplement issued to the claimant. (Department Exhibit 1, 4)

4. On April 14, 2010, the claimant submitted a Verification of Employment (DHS-38) for both employers [REDACTED], as well as paycheck stubs. (Department Exhibit 8 – 17)

5. The department did not notice the note on the Verification of Employment form from St. Vincent that indicated her hours had been cut to 20 hours per week and did not change her budgeted amount of income. (Department Exhibit 10)

6. The claimant submitted a hearing request on April 7, 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.

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%. A standard deduction from income of \$132 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 initially did not budget the claimant's proper rent expense. However, this was corrected on April 29, 2010, effective back to September 9, 2009. The claimant is receiving the heating/utility deduction of \$555.

The claimant's issue with this case is the budgeted amount of her employment income. The claimant testified that she stopped her employment with Hope Network sometime at the end of November, 2009. The claimant presented an email to her case worker at this hearing to show that she had contacted the worker. The email (Claimant's Exhibit 7) does not specify any information pertaining to a job loss or reduction in hours. The department representative in the hearing was asked to have the claimant's caseworker at the time review her emails, telephone logs and the case file to determine if there was any documentation of information provided by the claimant indicating that her hours were being reduced or her job was stopping. The case worker found no documentation to indicate the claimant reported the job loss or job reduction in hours prior to April 14, 2010, when a fax was received from the claimant.

The fax the claimant transmitted on April 14, 2010, included two Verification of Employment forms and paycheck stubs. These forms show that the claimant's employer at [REDACTED] did indicate that her hours were reduced to 20 hours per week. The department representative testified that the caseworker did appear to miss this note and did not budget the reduction in hours. The department representative testified that she would have the worker budget in the reduction in hours back to April 14, 2010, which would affect the May, 2010 FAP budget.

There does not appear to be any conclusive evidence that the claimant reported any reduction in hours prior to April 14, 2010. Thus, the department will rebudget the FAP case back to the May, 2010 benefits to reflect the reported reduction in hours. The department had

already budgeted the job loss back to March 4, 2010 and the rent expense back to September 9, 2009. Thus, the only remaining correction is the St. Vincent's job reduction to 20 hours weekly.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department did not properly budget the claimant's FAP benefits.

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

1. Rebudget the claimant's FAP benefits back May, 2010 to include the reduction in hours at St. Vincent's reported on April 14, 2010.
2. Issue the claimant any supplemental FAP benefits that she is otherwise entitled to receive.

SO ORDERED.

/S/ _____
Suzanne L. Keegstra
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: June 29, 2010

Date Mailed: June 29, 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]