

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: 2010-36796 &
2010-37910
Issue No: 3003,3014,3026
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 29, 2010
Wexford County DHS

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

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 hearing was held on June 29, 2010. Claimant appeared and testified.

ISSUE

Did the Department of Human Services properly determine Claimant's eligibility for 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) On November 1, 2009, Claimant's benefit group of six was certified to receive Food Assistance Program (FAP) benefits until October 31, 2010. The financial eligibility budget included self-employment income of \$ [REDACTED] no income classified as earned income and

unearned income of \$ [REDACTED] in child support. Claimant's group was placed in the Simplified Reporting category. (p. 135)

(2) On April 1, 2010, Claimant submitted a Semi-Annual Contact Report (DHS-1046) because their Food Assistance Program (FAP) case was due for semi-annual review on April 30, 2010. The report indicated that [REDACTED] Claimant's 19 year old son living with the group, began employment in February 2010. The report also indicated that Claimant receives \$ [REDACTED] per month in child support. (pp. 1 & 2)

(3) On May 3, 2010, a new financial eligibility budget was run to determine Claimant's eligibility for Food Assistance Program (FAP) benefits. The Department included [REDACTED] [REDACTED] income. For [REDACTED] income the Department calculated \$ [REDACTED] and classified it as earned income NOT eligible for the earned income deduction. The Department did not reduce the amount of child support income and incorrectly included \$ [REDACTED] of child support. Claimant was sent a Notice of Case Action (DHS-1605) stating her Food Assistance Program (FAP) case was closing due to excess net income. (p. 141)

(4) On May 7, 2010, Claimant submitted a request for hearing about the Food Assistance Program (FAP) case closing.

(5) On May 26, 2010, the Department ran two Food Assistance Program (FAP) financial eligibility budgets. The Department changed the self-employed income amount to \$ [REDACTED] and unearned child support income to \$ [REDACTED] on both budgets. For the Month of May 2010 there was no earned income deduction of [REDACTED] income and the Department determined that the group was still over income for May 2010. Page 150 Claimant was sent a Benefit Notice Form (DHS-176) explaining that the group was not eligible for benefits in May and that the earned income deduction on [REDACTED] earned income was not allowed for one month because they had failed to

report the income timely. P. 154 & 155. The second financial eligibility budget was for June 2010 and forward. The earned income deduction was applied to [REDACTED] income and the group was eligible for \$ [REDACTED] per month. Page 166 Claimant was sent a Notice of Case Action (DHS-1605) addressing June 2010 onward which stated the group was approved for \$ [REDACTED] per month in Food Assistance Program (FAP) benefits. P. 156-162

(6) On June 3, 2010, Claimant requested a hearing on the amount of Food Assistance Program (FAP).

(7) Claimant was scheduled for two separate hearings, one on June 29, 2010, and one on July 1, 2010.

(8) On June 29, 2010, the record and continuing issue for hearing on July 1, 2010 were incorporated into this hearing.

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).

In this case Claimant has raised two separate issues regarding the group's Food Assistance Program (FAP) benefits. First is how the Department dealt with [REDACTED] income. The second is how the group's self-employment income was calculated.

Department policy provides the following guidance for case workers. The Department's policies are available on the internet through the Department's website.

FOOD ASSISTANCE PROGRAM GROUP COMPOSITION

DEPARTMENT POLICY

Bridges will assist you in determining who must be included in the food Assistance Program (FAP) group prior to evaluating the nonfinancial and financial eligibility of everyone in the group.

FAP group composition is established by determining:

1. Who lives together.
2. The relationship(s) of the people who live together.
3. Whether the people living together purchase and prepare food together or separately, and
4. Whether the person(s) resides in an eligible living situation (see Living Situations).

RELATIONSHIPS

The relationship(s) of the people who live together affects whether they must be included or excluded from the group. First determine if they **must** be included in the group. If they are **not** mandatory group members, then determine if they purchase and prepare food together or separately.

Spouses

Spouses who are legally married and live together **must** be in the same group.

Parents and Children

Children include natural, step and adopted children. Parents and their children **under 22 years of age** who live together **must** be in the same group regardless of whether the child has his/her own spouse or child who lives with the group. (BEM 212)

FOOD ASSISTANCE SIMPLIFIED REPORTING

DEPARTMENT POLICY

Food assistance groups with countable earnings, as currently defined in the BEM 500 series, are assigned to the simplified reporting (SR) category.

This reporting option increases FAP participation by employed households and provides workload relief.

REQUIREMENTS

Simplified reporting groups are required to report **only** when the group's actual gross monthly income (**not** converted) exceeds the SR income limit for their group size. **No** other change reporting is required.

If the group has an increase in income, the group must determine their total gross income at the end of that month. If the total gross income exceeds the group's SR income limit, the group must report this change to their specialist by the 10th day of the following month, or the next business day if the 10th day falls on a weekend or holiday. Once assigned to SR, the group remains in SR throughout the current benefit period unless they report changes at their semi-annual contact or redetermination that make them ineligible for SR.

SR does not change reporting requirements for any other program.

The group is still assigned to SR if the person with earned income is a disqualified member.

DETERMINING THE INCOME LIMIT

The income limit is 130% of the poverty level based on group size. To determine the group's SR income limit, all eligible members of the FAP group are counted. See RFT 250.

Disqualified members are **not** included in the group size when determining the income limit. However, their budgetable income is included in the group's total gross income when comparing to the income limit.

NOTIFICATION

Bridges sends information about simplified reporting including the DHS-1045, Simplified Six Month Review, to groups assigned to the SR category at the following times:

- Application.
- Redetermination.
- When assigned to the SR category as an ongoing case.

Bridges sends the simplified reporting information which explains the reporting requirement and provides the gross monthly income reporting requirements for the group based on their circumstances at the time of issuance. The DHS-1605, Notice of Case Action, includes the specific income limit for the group based on the group size. Additionally, it advises what the group's income limit is each time a budget and notice are run for groups with earned income.

ASSIGNING BENEFIT PERIODS

Applications and Redeterminations

Groups meeting the SR category at application and redetermination are assigned a 12-month benefit period and are required to have a semiannual contact. For applications and redeterminations, SR begins the first month of eligibility.

Example: On March 19, a group with earned income applies for FAP.

The specialist processes the case on April 2. Benefits are approved beginning March 19. Bridges assigns a benefit period of March 19 through February 28. The DHS-1046, Semi-Annual Contact Report is sent out the beginning of the fifth month (July) of the benefit period. It is due back from the client on the first day of the sixth month (August.) Complete the budget to affect no later than the seventh month's benefits. At redetermination, the group's reporting requirements are re-evaluated based on their current circumstances. The specialist completes a redetermination in February for March. The benefit period is March 1 through February 28. See BAM 210.

PROCESSING CHANGES AND CASE ACTIONS

Benefit Increases

Timely action (within 10 days) **must** be taken on **all** client-reported changes which result in a FAP increase.

Benefit Decreases

Client-reported changes resulting in a decrease in benefits may or may not be acted upon when received. If not acted upon when received, they **must** be acted on by the next semi-annual contact, redetermination or any other change(s) which results in a benefit increase, whichever occurs first.

Example: Sally reports an increase in earnings (not exceeding 130%) and you choose not to act on this change at this time due to a decrease in benefits. Two months later, she reports having a baby. When adding the baby to the FAP case, you **must** also include her increase in earnings.

Note: The following **must** be acted upon timely (within 10 days) whether client reported, discovered through automated system matches etc.

- Group's actual gross income exceeds the 130% income limit for their group size.
- Client's request for case closure.
- Changes in the cash grant.
- Changes in RSDI/SSI.
- Changes in Michigan's UCB.
- Child support when there is an application/redetermination for another program such as MA, CDC, SER etc. See BAM 105.
- Changes acted on for another program such as MA, CDC, SER. etc.

Processing changes reported on a DHS-1046

Adequate notice is given for all changes discovered through automated system matches and/or reported on the DHS-1046. Complete the budget to affect no later than the 7th month's

benefits. Changes reported on the DHS-1046 and discovered through automated system matches must be acted upon for all other programs according to case action policy in BAM 220.

SPECIAL INCOME CONSIDERATION

Income considered unpredictable such as on-call hours, remains budgeted until the client determines a change should be reported, or the next redetermination/semi-annual contact, whichever occurs first.

OVERISSUANCE/UNDERISSUANCE AND SR

The only client error over issuances related to simplified reporting that can occur for FAP groups in SR are when the group fails to report that income exceeds the group's SR income limit, or the client voluntarily reports inaccurate information. For failure to report income over the limit, the first month of the overissuance is two months after the actual monthly income exceeded the limit. Groups report if their actual income for a month exceeds 130% of poverty level. QC uses the actual income when determining whether a client should have reported. See BAM 715.

Example: The group's income for September exceeded the SR income limit. The group should have reported this by October 10th. The decrease would have been effective in November. November is the first month of the overissuance.

SR does **not** affect client errors that occur at application and redetermination.

SR does **not** affect the determination of agency error overissuances. (BAM 200)

FAP INCOME BUDGETING

DEPARTMENT POLICY

This item applies **only** to **FAP**.

A non-categorically eligible Senior/Disabled/Veteran (SDV) FAP group must have income below the net income limits.

A non-categorically eligible, non-SDV FAP group must have income below the gross and net income limits.

Use **only** available, countable income to determine eligibility. The BEM 500 series defines countable income. BEM 505 defines available income and income change processing. This item describes income budgeting policy.

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.

Document income budgeting on either a manually-calculated or an automated FAP worksheet. (BEM 550)

COMPUTING THE FOOD ASSISTANCE BUDGET DEPARTMENT

DEPARTMENT POLICY

FAP Only

A food assistance worksheet must be completed at initial application and at each redetermination for all approvals, denials and closures made on the basis of income. In addition, the worksheet is used to document changes in income and expenses, and to document supplemental benefits. The worksheet is not needed to document withdrawn requests or applications as this documentation appears on form DHS-1171, Assistance Application/ Redetermination.

Specialists should use the automated food assistance budget (Bridges) to complete the required worksheet whenever possible.

COMPLETING THE DHS-2242, FOOD ASSISTANCE PROGRAM WORKSHEET

Complete the DHS-2242, Food Assistance Worksheet in the following manner:

5. Complete the Income Calculation.

Line 1- Enter monthly self-employment Income minus allowable farm income loss. Round the monthly amount down by dropping all cents from the final figure. If farm income loss exceeds self-employment income, enter zero and record any remaining farm income loss in Remarks section for use in line 10.

Line 2- Calculate the countable total of all other monthly earned income. Use the “**EARNED INCOME WORKSPACE**” or clearly document the calculation in the “Remarks” section. List each source of earned income and the verified gross income used as the basis of the calculation. Then, determine the countable monthly amount for each source, and enter it in the “Monthly Amount” column.

Line 3- Self-explanatory.

Line 4- Enter the amount from line I5 of the DHS-1172, FIP/SDA Worksheet or the FIP/SDA Automated Worksheet. Subtract the amount of shelter vendor payments made for temporary housing (see the first exception in BEM 500, Government Aid).

Line 5- Total the countable monthly amount of other unearned income, RSDI, SSI, UI, retirement benefits, etc.

Line 6- Self-explanatory.

Line 7- Determine the amount of Total Countable Income by adding the amount from line 3 to the amount from line 6 and deducting any remaining allowable farm income loss (see line 1.)

Note: For non-Senior/Disabled/Disabled Veteran groups who are not categorically eligible ONLY if the amount on line 10 exceeds the gross income maximum in RFT 250, FAP Income Limits, deny benefits.

Line 8- Enter 80% of the amount on line 3. Drop cents. See RFT 295, Combined Budget Tables.

Exception: Do not allow the 20% earned income deduction when determining overissuances due to failure to report earned income (refer to BAM 720, Intentional Program Violation):

- **For IPV overissuances issued in or after October 1987.**
- **For client error overissuances issued in or after September 1996.**

- Line 9- Enter the amount from line 6.
- Line 10- Determine the amount of gross income by adding the amount from line 8 to the amount from line 9 and deducting any remaining allowable farm income loss. (see line 1.)
- Line 11- Enter standard deduction from RFT 255, Food Assistance Standards.
- Line 12- Self-explanatory. (BEM 556)

Department policy cited above (BEM 212) shows that since [REDACTED] is a member of the household, under 22 years of age, and Claimant's son, he must be included in the group and his income must be used in determining the group's benefit eligibility. This requires that his income be reported to the Department.

Because the group was in the Simplified Reporting category income reporting requirements are governed by BAM 200, cited above. The policy states that simplified reporting groups are required to report **only** when the group's actual gross monthly income (**not** converted) exceeds the SR income limit for their group size. The gross income limit for a Simplified Reporting group of six is \$3,200. In accordance with BAM 200 the DHS-1605, Notice of Case Action, includes the specific income limit for the group based on the group size. Additionally, it advises what the group's income limit is each time a budget and notice are run for groups with earned income. The record does not contain the Notice of Case Action (DHS-1605) sent to Claimant at the beginning of the certification period. It does include the first seven of nine pages of the Notice of Case Action (DHS-1605) sent on May 26, 2010 stating the group is eligible for \$ [REDACTED] P. 156-162. There is no information on the first 7 pages of that notice regarding reporting requirements or income limits. Even though the Department submitted more than 175 pages of evidence, there is no evidence which shows that Claimant was given sufficient notice of the requirement to report [REDACTED] income prior to the Semi-Annual Contact Report (DHS-1046).

The Department asserts that because Claimant did not report [REDACTED] income timely, the earned income deduction should not be applied to his income for one month. The Department submitted pages from BEM 556, cited above, and appear to be relying on the exception for earned income deduction applicable to over-issuance budgets. BAM 200 does refer to over-issuance circumstances in Simplified Reporting cases. However, this case is not on an over-issuance and the earned income exception for over-issuances is not applicable to a financial eligibility budget. The Department's determination of the group's eligibility for Food Assistance Program (FAP) benefits in May 2010, is not in accordance with Department policy.

SELF-EMPLOYMENT INCOME

Department policy provides the following guidance for case workers. The Department's policies are available on the internet through the Department's website.

INCOME FROM SELF-EMPLOYMENT

DEPARTMENT POLICY

All Types of Assistance (TOA)

This item identifies all of the following:

- Guidelines for determining if an individual's income is considered to be from employment or self-employment.
- Allowable expenses of producing self-employment income.
- Self-Employment income types.

To create a new self-employment income record, go to the income questions screen and answer **yes** to the self-employment question. This will add the self-employment Logical Unit of Work (LUW) to the driver flow and cause Bridges to consider the income.

SELF-EMPLOYMENT

All TOA

An individual who runs their own business is self-employed. This includes but is not limited to selling goods, farming, providing direct services, and operating a facility that provides services such as adult foster care home or room and board.

COUNTABLE SELF-EMPLOYMENT INCOME

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. See Farming Expenses below.

Example: An individual operates a retail store. Total proceeds for the month are \$3,200. Allowable expenses total \$3,800. The \$600 deficit **cannot** be used to offset any other income.

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.

SELF-EMPLOYMENT EXPENSES

Allowed

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.

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

Not Allowed

Do **not** enter any of the following as self-employment expenses in Bridges:

- 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.

VERIFICATION REQUIREMENTS

All TOA except Healthy Kids

Verify countable income at **all** of the following:

- Application, including a program add, prior to authorizing benefits.
- At member add, only the income of the member being added.
- Redetermination.
- When program policy requires a change be budgeted.

VERIFICATION SOURCES

All TOA Self-Employment Income

- Business receipts.
- Accounting or other business records.
- Income tax return.

- Other acceptable method that provides needed information.
- DHS-431, Self-Employment Statement.

Self-Employment Expenses

- Receipts. (BEM 502)

In this case the group's self-employment income results from two separate business entities. Self-employment income was calculated as \$ [REDACTED] at the beginning of the certification period in November 2009. When Claimant submitted the Semi-Annual Contact Report (DHS-1046) 2009 income taxes were also submitted along with business records for January through March 2010. P. 27-124. BAM 200, cited above, indicates that recalculating income is appropriate at a Simplified Reporting Semi-Annual Review. Based on the information submitted the Department calculated a monthly self-employment income of \$ [REDACTED]. The copious notes and calculations the Department case worker wrote on the information are clear evidence that she made a significant effort to apply Department policy and determine the appropriate income from self-employment. In spite of two hours of review and punching buttons on a calculator, I was unable to determine the exact manner used to determine the \$ [REDACTED] figure. Due to the limited amount of time allotted to conduct hearings, specific and detailed testimony was not obtained from the case worker on her calculations or from Claimant on what specific disagreements they had with the calculation. Claimant's testimony about the self-employment income centered on assertions that all required receipts had been submitted. My review of the information does support a finding that many of the receipts were not clearly identifiable and therefore not adequate verification as required by Department policy.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department of Human Services did properly determine Claimant's eligibility for Food Assistance Program (FAP) benefits beginning June 2010 but DIID NOT properly determine eligibility for the month of May 2010.

It is ORDERED that the actions of the Department of Human Services, with regard to Food Assistance Program (FAP) benefits beginning in June 2010, are UPHeld.

It is ORDERED that the actions of the Department of Human Services, regarding Food Assistance Program (FAP) benefits for May 2010, are REVERSED.

It is further ORDERED that Food Assistance Program (FAP) benefits for May 2010 be recalculated to include an earned income deduction for [REDACTED] income and Claimant be supplemented any MAY benefits she was eligible for but did not receive.

/s/

Gary F. Heisler
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: July 19, 2010

Date Mailed: July 20, 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.

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