

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF THE CLAIM OF:

[REDACTED]

Reg. No.: 2010 37589
Issue No.: 3002
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: June 28, 2010
Wayne County DHS (19)

ADMINISTRATIVE LAW JUDGE: Lynn Ferris

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 held on June 28, 2010. The claimant appeared and testified. [REDACTED], FIM and [REDACTED] ES appeared on behalf of the Department.

ISSUE

Whether the Department properly calculated the Claimant's Food Assistance (FAP) budget with regard to unearned income child support and did the Department properly decrease the Claimant's FAP benefits?

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 is a Food Assistance recipient and currently receives FAP benefits in the amount of \$38 per month as determined by her current FAP budget. Exhibit 3
- 2) The Claimant completed a redetermination in May 1, 2010 and it was determined based upon the information provided by the Claimant that her unearned income and group size had changed. Exhibit 1
- 3) The Claimant began living with her brother and advised the Department that they bought and prepared their food together. Exhibit 1

- 4) The Claimant's current group consists of 3 members. The group size is correct in the budget as computed. Exhibit 1
- 5) The claimant pays \$824 per month for rent and pays heat. The correct amount of rent and a heating allowance is included and is correct in the budget as computed. Exhibit 1
- 6) The Claimant's FAP benefits were reduced by the Department due to the increase of unearned income the group received from unemployment benefits and child support.
- 7) The Department utilized a monthly child support figure of \$618 when it averaged three months child support starting with February in the amount of \$418, March, \$949 and May \$457.
- 8) The Claimant is supposed to receive \$457 a month in child support.
- 9) The Claimant does not dispute the amount of the unemployment benefits received by her brother.
- 10) The claimant's notes of her bank account , not the actual bank records indicate that she received the following amounts in child support: January \$457; February \$418; March \$457; April \$492; May 457 and June \$457.
- 11) Based on the Child Support Search by the Department the Claimant did receive \$949.25 per month in June, 2009, November 2009 and March 2010 for child support arrearages. It should also be noted that the Claimant only received \$457 in May and no payment in June. Exhibit 2
- 12) The Claimant requested a hearing on May 25, 2010 protesting the reduction of her FAP benefits. The Department received the Claimant's hearing request on May 27, 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 (formerly known as the Family Independence Agency) administers the FAP program pursuant to CML 400.10 *et seq.*, and MAC R 400.3001-3015. Department 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 and unearned 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. BEM 550. Under 7 CFR 273.9, as amended, \$132.00 is deducted from the gross income of FAP recipients in determining FAP grants. Under 7 CFR 273.9 deductions for excess shelter are also made. BEM 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 Claimant's group income consists of unearned income from unemployment benefits received by her brother in the amount of \$1556, (Exhibit 4) and child support received by the Claimant for her child (Exhibit 2). Claimant does not dispute any of the unemployment compensation benefit income figure which was used by DHS in calculating the FAP budget. As regards the child support, the Department is required to average the last three month of child support received to determine the monthly income received for Child support. In this case the Department in conformance with Policy, averaged three months, one month of which contained an arrearage payment, and correctly determined the monthly amount for child support averaged to be \$618. However, it is noteworthy that the Claimant received \$457 in April, \$457 in May 2010 and no child support in June, 2010. (Exhibit 2) Given these facts the monthly child support amount to be included in the FAP budget would decrease to \$305. ($\$457 + \$457 + 0 = \$914 \div 3 = \305) BEM 505, pages 3 and 4.

The Department's determination of the monthly gross income, which it utilized to determine FAP eligibility, is correct through the period May 21, 2010, however the Department should recalculate for the months of June 2010 forward to include the lower child support amount. The Claimant is cautioned that should her child support increase, or should her brother stop receiving unemployment benefits she is required to advise the Department through her assigned case worker that the increase or decrease has occurred, within 10 days of the change.

In the present case, according to the aforementioned policy on budgeting, it is found that the Claimant's FAP budget is correct through May 21, 2010 and that the FAP budget going forward should use a different averaged amount for child support as set forth above.

Based upon the foregoing facts and relevant law, it is found that the Department's determination is AFFIRMED.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds that the Department properly denied the Claimant's FAP application.

Accordingly, the Department's computation and determination of the Claimant's FAP benefits as determined by the Notice of Case Action dated May 21, 2010 is correct and is therefore AFFIRMED.

The Department calculation of the Claimant FAP benefits is incorrect as regards FAP benefits on and after July 1, 2010 and is REVERSED. Accordingly the Department is Ordered to refigure the Claimant's FAP benefits going forward beginning July, 1, 2010 utilizing a reduced unearned income for Child support in the amount of \$305 until such time as the Department's information relative to the Claimant's child support income indicates more income is received, or is advised by the Claimant of a change in the Child support she receives.



Lynn Ferris
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: 07/07/2010

Date Mailed: 07/07/2010

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 of the rehearing decision.

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