

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201044426  
Issue No.: 3003  
Case No.: [REDACTED]  
Load No.: [REDACTED]  
Hearing Date: August 18, 2010  
Wayne County DHS (43)

**ADMINISTRATIVE LAW JUDGE:** Christian Gardocki

**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 August 18, 2010. The claimant appeared and testified. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, appeared and testified.

**ISSUE**

Whether DHS properly determined Claimant's monthly employment income in finding Claimant ineligible for FAP benefits due to excess-income.

**FINDINGS OF FACT**

The Administrative Law Judge, based upon the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Claimant applied for FAP benefits on 7/13/10. Exhibit 1.
2. Claimant is part of a FAP group of three persons; herself and two minor children.
3. Claimant receives \$913.78/month in child support for her two children.
4. Claimant was employed as a teaching assistant for [REDACTED].
5. Per Claimant's contract with her employer, Claimant is only employed during the school year and not employed when school is out of session in the summer.

6. Per Claimant's contract, Claimant has the option of receiving her salary over a 12 month period or only during the approximate ten month period that she is employed.
7. Claimant opted to be paid by her employer only during the time she is actively working.
8. DHS determined that Claimant's monthly gross income exceeded the gross income limits for a FAP group of three and denied Claimant's 7/13/10 request for FAP benefits.
9. On 7/19/10, Claimant requested a hearing disputing the denial of 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 (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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

Contractual income is defined as income that is received in one month(s) that is intended to cover more than one month. For example, a teacher on a yearly contract who is paid over the nine month school year; or the single payment distributed quarterly from casino profits. BEM 505 at 1.

For contractual income, DHS specialists are directed to calculate the monthly average income if the benefit month is one of the months covered by the income. BEM 505 at 5. The monthly income average is calculated by dividing the annual income by the number of months it is intended to cover. This amount is considered available in each of the months covered by the income. *Id.*

In the present case, Claimant applied for benefits on 7/13/10. DHS used Claimant's 6/2010 income to determine Claimant's 7/2010 FAP benefit eligibility. DHS stated they used Claimant's income from 6/2010 because they are required to use the last 30 days of income. DHS specialists are directed to use income from the past 30 days to prospect income but only if it appears to accurately reflect what is expected to be received in the benefit month. BEM 505 at 4. Claimant credibly testified that she is employed for approximately ten months of the year, her last pay of the ten month period was received in 6/2010 and no employment income was expected in 7/2010. DHS failed to consider Claimant's income change in prospecting her income.

Claimant also testified that she has the option receiving her wages over twelve months or over the ten month period of time she works. This is based on a contract Claimant has with her employer. Claimant chose the option of receiving higher pays during the time she works and receiving zero income during the time she does not work. By using Claimant's 6/2010 income, DHS used Claimant's average monthly income over a ten month period to determine Claimant's income eligibility for FAP benefits. DHS should have budgeted Claimant's average monthly employment income over a twelve month period, the length of Claimant's employment contract. It is found that DHS improperly determined Claimant's income in calculating her eligibility for FAP benefits.

DHS should have calculated Claimant's average monthly income over the ten month period that she is paid, multiplied that amount by ten (the number of months that Claimant receives income) to convert the income into an annual amount and divided that amount by twelve to calculate Claimant's average monthly income over the length of her employment contract.

Claimant and DHS failed to submit employment income verifications. The undersigned is unable to calculate Claimant's proper monthly gross employment income without verification of Claimant's income. It should be noted that after DHS calculates Claimant's proper monthly employment income, Claimant may still have excess income for FAP benefit eligibility.

**DECISION AND ORDER**

The actions taken by DHS are REVERSED. The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS improperly calculated Claimant's eligibility for FAP benefits beginning 7/13/10. It is ordered that DHS recalculate Claimant's FAP eligibility beginning 7/13/10 using Claimant's average monthly employment income over a twelve month period.

/s/



Christian Gardocki  
Administrative Law Judge  
For Ismael Ahmed, Director  
Department of Human Services

Date Signed: September 1, 2010

Date Mailed: September 1, 2010

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**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.

CG/ hw

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