

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

IN THE MATTER OF:



Reg. No: 2010-49640
Issue No: 3026
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 16, 2010
Sanilac 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 September 16, 2010. Claimant appeared and testified.

ISSUE

Did the Department of Human Services properly determine the amount of Claimant's 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) Claimant was an ongoing recipient of Food Assistance Program (FAP) benefits.
- (2) On March 31, 2010, Claimant submitted a Redetermination Form (DHS-1010) with income and expense information. Claimant is self-employed and provided her tax returns as evidence of her self-employment income and expenses.
- (3) On April 13, 2010, a Food Assistance Program (FAP) financial eligibility budget was run using the 25% of total proceeds for self-employment business expenses. Claimant was sent a Notice of Case Action (DHS-1605) stating her Food Assistance Program (FAP) benefits would be \$ [REDACTED] per month beginning May 1, 2010.

- (4) Claimant provided receipts when she was informed that receipts of her business expenses were required in order to have expenses in excess of %25.
- (5) On May 18, 2010, Claimant's Food Assistance Program (FAP) financial eligibility budget was updated using some, but not all of the receipts submitted. Claimant was sent a Notice of Case Action (DHS-1605) stating her FAP benefits would be \$ [REDACTED] per month beginning June 1, 2010.
- (6) On July 8, 2010, Claimant submitted a request for hearing.
- (7) The record was extended in this case to allow Claimant to submit a written statement which was received June 22, 2010, and was considered in this decision.

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 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.

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.

Note: Allowable expenses for rental/room and board are different than those listed above. See BEM 504, ALLOWABLE RENTAL EXPENSES.

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 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. (9BEM 502)

In this case the Department stated that they had previously, and incorrectly, used expenses from tax returns to calculate self-employment income for Food Assistance Program (FAP) financial eligibility budgets. The Department used the standard 25% initially because Claimant had not provided receipts. Once Claimant provided receipts the Department case worker went through the receipts and used most, but not all of them in the financial eligibility budget. The case worker testified that he did not use the mileage because it was reported as miles, without fuel receipts, and there was no way to tell how much of the mileage was personal or business. During the hearing Claimant stated she was not contesting any of the business expenses but mileage. Claimant asserts the mileage she reported should be included in her self-employment business expenses. Claimant was specifically asked if any of the 200 pages of receipts were for fuel or other vehicle costs. Claimant testified that there were no receipts for the purchase of fuel or vehicle maintenance in what she submitted. While Department policy does allow transportation costs, those costs must be verified with receipts.

When the Department ran the April 13, 2010 budget there were no receipts submitted to verify self-employment business receipts. The Department correctly used 25% of total proceeds in the budget.

When the Department ran the May 18, 2010 budget they used most of the receipts submitted. During this hearing Claimant stated she was only contesting her mileage expenses. The Department policy clearly requires receipts to verify self-employment business expenses. Claimant testified that she did not submit any fuel or vehicle maintenance receipts. If the asserted mileage was not verified with receipts, it cannot be included in the self-employment business expenses.

Claimant also asserts she was promised by a Department worker that she (Claimant) would be receive the same amount of benefits for May 2010 that she was found eligible for beginning in June 2010. Claimant asserts the Department has to give her (\$ [REDACTED] for June) – [REDACTED] for May) = \$ [REDACTED]. Even if the Department worker Claimant spoke had appeared and testified that the promise was made, it is neither a legally enforceable promise nor within the scope of authority delegated to this Administrative Law Judge pursuant to a written directive signed by the Department of Human Services Director, which states:

Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations or overrule or make exceptions to the department policy set out in the program manuals.

Furthermore, administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940); *Auto-Owners Ins Co v Elchuk*, 103 Mich App 542, 303 NW2d 35 (1981); *Delke v Sc heuren*, 185 Mich App 326, 460

NW2d 324 (1990), and *Turner v Ford Motor Company*, unpublished opinion per curium of the Court of Appeals issued March 20, 2001 (Docket No. 223082).

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department of Human Services properly determined the amount of Claimant's Food Assistance Program (FAP) benefits.

It is ORDERED that the actions of the Department of Human Services, in this matter, are UPHeld.

/s/

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

Date Signed: September 28, 2010

Date Mailed: September 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.

GFH/alc

cc:

