

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: 2010-5483

Issue No: 2001, 3002

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date: [REDACTED]

Kent 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 telephone hearing was held on [REDACTED]. Claimant appeared and testified.

ISSUES

Did the Department of Human Services properly close Claimant's Adult Medical Program (AMP) case due to excess income?

Did the Department of Human Services determine the proper amount of Claimant's Food Assistance Program (FAP) benefits as [REDACTED]?

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 Adult Medical Program (AMP) benefits and Food Assistance Program (FAP) benefits.

(2) On September 10, 2009, Claimant submitted a Semi-Annual Contact Report (DHS-1046) which indicated his wife was receiving Unemployment Compensation Benefits (UCB).

(3) On October 14, 2009, Claimant's financial eligibility budgets for the Adult Medical Program (AMP) and Food Assistance Program (FAP) were updated to include the Unemployment Compensation Benefits (UCB) coming into his benefit group. Claimant was sent a Notice of Case Action (DHS-1605) stating he was no longer eligible for the Adult Medical Program (AMP) and that his Food Assistance Program (FAP) benefits were being reduced to ■.

(4) On October 20, 2009, Claimant submitted a request for hearing.

CONCLUSIONS OF LAW

The Adult Medical Program (AMP) is established by Title XXI of the Social Security Act; (1115)(a)(1) of the Social Security Act, and is administered by the Department of Human Services (DHS or department) pursuant to MCL 400.10, *et seq.* Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

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 does not dispute that his wife received Unemployment Compensation Benefits (UCB). Claimant disputes the amount of unearned income used in the financial eligibility budgets attributable to his wife's unemployment benefits. Department policy provides the following guidance for case workers. The Department's policies are available on the internet through the Department's website.

INCOME, UNEARNED

DEPARTMENT POLICY

All Types of Assistance (TOA)

This item identifies all of the following:

- Unearned income types.
- Definition of each unearned income type.
- Whether an unearned income type is countable or excluded for each TOA.

UNEMPLOYMENT BENEFITS

All TOA Except FTW

Unemployment benefits include all of the following:

- Unemployment benefits (UB) available through the Michigan Unemployment Insurance Agency (UIA) and comparable agencies in other states.
- Supplemental unemployment benefits (SUB pay) from an employer or other source.
- Trade Readjustment Act (TRA) payments.

Count the gross amount as unearned income. (BEM 503)

The Department used information supplied by the Unemployment Insurance Agency. That information lists the gross benefit as [REDACTED] per week and shows the biweekly total

budgetable amount as [REDACTED]. The [REDACTED] amount includes [REDACTED] per week in federal additional compensation authorized by the Economic Stimulus Package passed by Congress earlier in 2009.

Claimant and his wife assert that only [REDACTED] per week should be used in the financial eligibility budgets. The policy cited above clearly includes the additional [REDACTED] per week as unemployment benefits to be counted in the gross unearned income. Claimant and his authorized hearing representative submitted a bank statement into evidence which shows biweekly deposits of [REDACTED] from UIA Michigan UI Benefit. Claimant asserts this evidence shows they do not get [REDACTED] every two weeks. Claimant submitted no evidence showing how much is being withheld from the Unemployment Compensation Benefits (UCB) and his wife testified that she does not know how much is being withheld. [REDACTED] \$? The submitted bank statement alone cannot prove the gross amount of unearned income Claimant and his wife receive from the Unemployment Insurance Agency every two weeks. Claimant has not shown that the information supplied to, and used by, the Department from the Unemployment Insurance Agency is incorrect.

Claimant also asserts that his medical expenses were not taken into consideration when it was determined his Adult Medical Program (AMP) case should be closed. Claimant's authorized hearing representative correctly points out that the Notice of Case Action (DHS-1605) sent to Claimant lists BEM 544 (BEM 544 MA NEEDS - GROUP 2) in the section giving the reason that the Adult Medical Program (AMP) was closed. It is noted that the Notice of Case Action (DHS-1605) also states "Income exceeds limit for the program." Claimant's authorized hearing representative argues that since BEM 544 was listed on the Notice of Case Action (DHS-1605) that Claimant's medical expenses should be considered under BEM 545 (BEM 545 MA GROUP 2 INCOME ELIGIBILITY).

There is no dispute that Claimant's medical benefits were under the Adult Medical Program (AMP). The question of whether or not Claimant should have been in the Adult Medical Program (AMP) or some other program is not a hearable issue because no request for hearing was submitted within 90 days of the date of notice of case action when Claimant was placed in the Adult Medical Program (AMP). The Adult Medical Program (AMP) is NOT a MEDICAID program.

MEDICAID OVERVIEW

DEPARTMENT POLICY

MA Only

The goal of the Medicaid program is to ensure that essential health care services are made available to those who otherwise could not afford them. Medicaid is also known as Medical Assistance (MA).

SSI-RELATED AND FIP-RELATED

The Medicaid program is comprised of several sub-programs (i.e., categories). One category is FIP recipients. Another category is SSI recipients. There are several other categories for persons not receiving FIP or SSI. However, the eligibility factors for these categories are based on (related to) the eligibility factors in either the FIP or SSI program. Therefore, these categories are referred to as either FIP-related or SSI related.

To receive MA under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled.

Families with dependent children, caretaker relatives of dependent children, persons under age 21 and pregnant, or recently pregnant, women receive MA under FIP-related categories.

GROUP 1 AND GROUP 2

In general, the terms Group 1 and Group 2 relate to financial eligibility factors. For Group 1, net income (countable income minus allowable income deductions) must be at or below a certain income limit for eligibility to exist. The income limit, which varies

by category, is for nonmedical needs such as food and shelter. Medical expenses are not used when determining eligibility for FIP-related and SSI-related Group 1 categories.

For Group 2, eligibility is possible even when net income exceeds the income limit. This is because incurred medical expenses are used when determining eligibility for FIP-related and SSI-related Group 2 categories.

BEM 110 THROUGH 174

BEM 110 through 174 describe all of the MA categories and the eligibility factors for each category. BEM 110 through 145 describe the FIP-related categories. BEM 150 is for SSI recipients and certain former SSI recipients. BEM 155 through 174 describe SSI-related categories. EXHIBIT I - LIST OF ALL MA CATEGORIES in the System's Instructions Codes (SIC) manual, MA Desk Aids.

Note: Certain non-Medicaid medical programs are described in various BEM 600 series items. Some of these programs are administered by DHS and some are not. (BEM 105)

The Medical Assistance (MA) (MEDICAID) program is established by Title XIX of the Social Security Act. Financial eligibility budgeting for Medical Assistance (MA) (MEDICAID) programs is governed by BEM 530-547.

The Adult Medical Program (AMP) is established by Title XXI of the Social Security Act. The Adult Medical Program (AMP) is governed by BEM 640.

ADULT MEDICAL PROGRAM

DEPARTMENT POLICY

DETERMINE IF AN ENROLLMENT FREEZE IS IN EFFECT BEFORE CONSIDERING ELIGIBILITY FOR THIS PROGRAM.

AMP Only

The Adult Medical Program (AMP) is available to individuals who meet all the eligibility factors in this item. Certain aliens are limited to coverage of emergency services (ESO).

ELIGIBILITY FOR OTHER MEDICAL PROGRAMS

AMP-H and AMP-G

Consider eligibility for Medical Assistance (MA), Medical Aid for refugees before authorizing AMP coverage.

Clients eligible for MA or other DHS medical benefits are not eligible for AMP.

Exceptions:

- AMP should be approved in cases where determination of disability or blindness is delayed.

Clients clearly not eligible for any other medical assistance programs do not have to apply for them.

- There are MA categories for clients who are:
 - Age 65 or older, blind, or disabled.
 - Pregnant or recently pregnant.
 - Caretaker relatives of dependent children.
 - Under age 21.
 - Refugees.

See SIC, MA Desk Aids, Exhibit I for a list of MA categories.

CATEGORIES

There are two categories of AMP.

- **G program (AMP-G)** - SDA cash payment recipients are eligible for AMP when they:
 - Are not eligible for MA (see “**Exceptions**” on page 1) or other Department medical programs, **and**
 - Do not have private health care coverage (see “Private Health Coverage” below), and

- There is not an enrollment freeze in effect in the month of application.
- **H program (AMP-H)** - Clients receive medical benefits only. Clients must meet all eligibility factors in this item.

FINANCIAL ELIGIBILITY FACTORS

AMP-H

Group

Use AMP policy in BEM 214.

Assets

Determine countable assets based on AMP policy in BEM 400.

The program group's countable assets cannot exceed the AMP asset limit in BEM 400.

Income Eligibility

Application

Income eligibility exists when the program group's **net** income does not exceed the program group's AMP income limit.

Income Limit. The AMP income limits are in RFT 236. When the client's living arrangement changes during a month, use the living arrangement with the higher income limit.

COUNTABLE INCOME

AMP-H

Use only countable income. Countable income is income remaining after applying AMP policy in BEM 500, 501, 502, 503, 504.

AVAILABLE INCOME

AMP-H

Use only available income. Available means income which is received or can reasonably be anticipated. Available income

includes amounts garnisheed from income, joint income, and income received on behalf of a person by his representative. See BEM 500 for details.

EXTRA CHECK

AMP-H

Do not budget income that results from an extra check (e.g., 5th check for a person who is paid weekly).

AVERAGED INCOME

AMP-H

Average income received in one month which is intended to cover several months. Divide the income by the number of months it covers to determine the monthly available income. The average amount is considered available in each of the months.

BUDGET MONTH INCOME

AMP-H

Past Month

Non-averaged income: Use amount actually received in the past month. Do not budget an “**EXTRA CHECK.**”

Averaged income: Use the monthly average amount if this month is one of the months used to compute the average.

Processing Month

Non-averaged income: At **application**, use amounts already received in the processing month. In addition, estimate amounts likely to be received during the remainder of the month. Base these estimated amounts on information provided by the client. Do not budget an “**EXTRA CHECK.**”

Averaged income: Use the monthly average amount if this month is one of the months used to compute the average.

Future Month

Non-averaged income: Use amounts that will be, or are likely to be, received in the future month.

Exceptions:

- Do not budget an extra check (e.g., fifth check for person paid weekly).
- Base estimate of daily income (e.g., insurance pays \$40 for every day in hospital) on a 30-day month.

When the amount of income from a source changes from month to month, estimate the amount that will be received in the future month.

Example: For fluctuating earned income, use the expected hourly wage and hours to be worked, as well as the pay day schedule, to estimate gross earnings.

Averaged income: Use the monthly average amount if this month is one of the months used to compute the average.

Income Deductions

Individual Deduction.

Deduct \$200 from a program group member's gross earnings. Then deduct 20% of the person's remaining gross earnings. The total disregard cannot exceed the person's gross earnings.

Group Deduction.

Deduct the amount of court-ordered support paid by program group members in the month being tested from the program group's remaining income. The deduction can be no greater than the amount ordered for the month. Do not deduct arrearage payments. (See BEM 640)

Having illustrated some of the main differences between the Adult Medical Program (AMP) and a Group 2 MEDICAID program let us revisit the assertion that BEM 545 MA GROUP 2 INCOME ELIGIBILITY should be used to determine Claimant's eligibility under the Adult Medical Program (AMP) due to a clerical error on the Notice of Case Action (DHS-1605).

To do so would be to ignore Federal statutes and State policies as well as the jurisdictional limitation of an Administrative Law Judge. The claimant's request is not 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 Scheuren*, 185 Mich App 326, 460 NW2d 324 (1990), and *Turner v Ford Motor Company*, unpublished opinion per curiam of the Court of Appeals issued March 20, 2001 (Docket No. 223082).

The financial eligibility budget for the Adult Medical Program (AMP) uses actual income per month so the bi-weekly amount is multiplied by 2. In this case the Department representative stated that the BRIDGES computer program throws out the supplemental \$ [REDACTED] per week of federal additional compensation authorized by the Economic Stimulus Package. That calculation resulted in a gross unearned income of [REDACTED]. The calculation is contradictory to the BEM 503 and Claimant's gross unearned income should be [REDACTED]. The Adult Medical Program (AMP) income limit for Claimant living independently with his spouse is \$ [REDACTED]. Both the correct and incorrect gross unearned income makes both Claimant and his spouse ineligible for the Adult Medical Program (AMP). Because the discrepancy in gross unearned income does not change Claimant's eligibility, there is no need to order a correction of this specific budget.

In this case, the Administrative Law Judge has reviewed the Food Assistance Program (FAP) budget and finds that the department properly computed the claimant's net income and expenses. The federal regulations at 7 CFR 273.10 provide standards for the amount of a household's benefits. The department in compliance with the federal regulations has prepared issuance tables which are set forth at Program Reference Manual, Table 260. The issuance table provides that a household with household size and net income of the claimant's is eligible for a Food Assistance Program (FAP) allotment of \$ [REDACTED]

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 closed Claimant's Adult Medical Program (AMP) case due to excess income and determine the proper amount of Claimant's Food Assistance Program (FAP) benefits as \$ [REDACTED]

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: April 5, 2010

Date Mailed: April 6, 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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