

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. 201055516
Issue No. 3002
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date: December 15, 2010
Ionia County DHS

ADMINISTRATIVE LAW JUDGE: Marlene B. Magyar

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, an in-person hearing was held on December 15, 2010. Claimant personally appeared and testified.

ISSUE

Did the department properly reduce claimant's Food Assistance Program (FAP) allotment to \$16 per month, effective October 1, 2010?

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 is a single, 22-year-old female (DOB [REDACTED]) who resides with her toddler (DOB: [REDACTED]) in [REDACTED] (Department Exhibit #1, pgs 3 and 4).
2. On July 16, 2010, claimant filed a FAP application based on this two person household (Department Exhibit #1, pgs 1-16).
3. At application, claimant provided a written statement from her child's caregiver verifying she paid [REDACTED] monthly in child daycare expenses during her full-time working hours (Department Exhibit #1, pgs 16 and 17).

4. The department considered/budgeted this monthly child daycare expense, which resulted in claimant's household initially being eligible for a [REDACTED] monthly FAP allotment (Department Exhibit #1, pgs 22 and 23).
5. On September 9, 2010, claimant's child's caregiver provided an updated written statement saying claimant was no longer paying her for watching the child (Department Exhibit #1, pg 26).
6. When the department removed the child daycare expense deduction from claimant's updated FAP budget, it caused a decrease in her FAP level to [REDACTED] per month (Department Exhibit #1, pgs 27-29).
7. On September 10, 2010, the department advised claimant of this reduction in writing; whereupon, claimant filed a timely hearing request (Department Exhibit #1, pg 30).
8. Claimant's hearing was held in the [REDACTED] office on December 15, 2010.
9. Claimant stipulated on the record at hearing her caregiver's written representation regarding the child daycare income stop was factually correct.
10. Claimant indicated at hearing she was unhappy with the dramatic FAP reduction.

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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

The applicable departmental policy states:

INCOME

DEPARTMENT POLICY

All Programs

The group composition and program budgeting items specify whose income to count. The program budgeting items might also contain program-specific income deductions or disregards.

Income means benefits or payments measured in money. It includes money a person owns even if NOT paid directly such as stock dividends automatically reinvested and income paid to a representative.

Earned income means income received from another person or organization or from self-employment for duties that were performed for remuneration or profit. Unearned income means all income that is NOT earned income. The item specifies whether the income is earned or unearned.

The amount of income counted may be more than the amount a person actually receives, because it is the amount before any deductions including deductions for taxes and garnishments. The amount before any deductions is called the **gross** amount. PEM, Item 500, p. 1.

Income remaining after applying the policy in this item is called **countable**.

Count all income that is NOT specifically excluded. PEM, Item 500, p. 1.

Wages

All Programs

Wages are the pay an employee receives from another person or organization. Wages include salaries, tips, commissions, bonuses, severance pay and flexible benefits plan funds.

Count an employee's regular wages paid during a vacation or illness as earned income.

PEM, Item 500, p. 15.

Complete either manually-calculated or LOA2 budget to document expenses every time an expense change is reported. PEM, Item 554, p. 1.

ALLOWABLE EXPENSES

Allow an expense if:

- . the service is provided by someone outside of the FAP group, and
- . someone in the FAP group has the responsibility to pay for the service in money, and
- . verification is provided, if required. PEM, Item 554, p. 1.

BUDGETING EXPENSES

Budget Month

Use expenses from the same calendar month as the month for which you are determining benefits. PEM Item 554, p. 2.

Determining the Monthly Amount

Convert all expenses (except one-time-only expenses the group does not wish to average) to a non-fluctuating monthly amount.

Use the same conversion method used to determine countable available income in PEM 505. To convert a:

- . weekly expense, multiply the average weekly expense by 4.3
- . twice a month expense, multiply the average weekly expense by 2

- . bi-weekly expense, multiply the average bi-weekly expense by 2.15
- . yearly expense, average the bill over 12 months beginning with the first billing of the year,
- . quarterly expense, average the bill over 3 months
- . expenses billed less often than monthly, average the expense over the balance of the benefit period beginning with the first benefit month the change can affect.

Exception: Groups that have 24-month benefit periods must be given options for one-time-only medical expenses, See MEDICAL EXPENSES in this item. PEM, Item 554, p. 3.

This Administrative Law Judge has reviewed the department's updated FAP budget and she finds all calculations were properly made. When the department learned claimant (admittedly) no longer paid for child daycare services, they had no alternative but to remove that expense allowance from her FAP budget. As such, the department's action must be upheld

Claimant's grievance centers on dissatisfaction with the department's current policy. 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).

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DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly reduced claimant's FAP allotment to [REDACTED] per month, effective October 1, 2010.

Accordingly, this department's actions are AFFIRMED.

/S/
Marlene B. Magyar
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: December 21, 2010

Date Mailed: December 21, 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.

MBM/db

cc:

