

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: 2010-9388

Issue No: 3003

Case No:

[REDACTED]

Load No:

Hearing Date:

January 28, 2010

Macomb County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

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 conducted on January 28, 2010. The Claimant appeared and testified. Tracey Jones, DHS Eligibility Specialist, Maureen McGrew, DHS Eligibility Specialist, and Bridget Krantz, Family Independence Manager appeared on behalf of the Department.

ISSUE

Whether the Department properly computed the Claimant's Food Assistance Program ("FAP") benefits for the period January 2009 through July 2009?

FINDINGS OF FACT

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

1. The Claimant was an active FAP recipient who receives unearned income from SSI and child support payments.

2. On September 22, 2009, Administrative Law Judge Colleen Lack issued a Decision finding that the Claimant was not receiving the correct monthly FAP allotment and directing the Department to recalculate benefits retroactive to January 2009 taking into account the changes in child support payments and award benefits to claimant if appropriate. Case no. X0805928A
3. The Department issued a supplement in October 2009 in the amount of \$167.00 for the period January 1, 2009 through July 31, 2009. (Exhibit 1, p. 2).
4. Claimant had obligations for shelter expenses (rent) in the amount of \$709.00. Claimant was also responsible for paying her electric and telephone expenses.
5. The Department included these shelter and utility expenses in recalculating the claimant's budget.
6. The claimant receives \$688.00 in SSI benefits each month.
7. The FAP budgets for the period January 2009 through July 2009 are attached as Exhibit 1 pp. 16-22.
8. Claimant has a household group of three (3) persons.
9. As of the date of the hearing, the Department had not calculated the claimant's FAP benefits for August 2009 and September 2009.
10. Claimant objected to the FAP calculation and filed this appeal. The Department received the Claimant's Request for Hearing on October 20, 2009.

CONCLUSIONS OF LAW

The Food Assistance Program, 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”), formally known as the Family Independence Agency, administers the FAP program pursuant to MCL 400.10, *et. seq.* and MAC R 400.3001-3015. Departmental policies are found in the Bridges Administrative Manual (“BAM”), the Brides Eligibility Manual (“BEM”), and the Program Reference Manual (“PRM”).

The federal regulations define household income to include all earned 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, \$135.00 is deducted from the gross income of FAP recipients in determining FAP grants. Unearned income includes SSI payments for family members. BEM 500, pp. 10 & 33. Amounts that are unusual and not expected to continue should not be included in the calculation. 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.

In calculating income from child support, BEM 505 directs the Department to use the average of child support payments received in the past 3 calendar months prospectively, unless changes are expected. If the past 3 months’ child support is not a good indicator of future payments, the Department must calculate an expected monthly amount for the benefit month based on available information and discussion with the client.

In the present case, the Department recalculated the FAP budgets using the most current and available child support payments averaging the previous three months child support payments received by the claimant and utilized those figures in recalculating the Claimant’s FAP

budget. A review of the budgets confirms that the Department properly recalculated the claimant's FAP benefits and that the \$167.00 supplement is correct.

It should be noted that there is no requirement that the Department recalculate the child support every month based on fluctuating income. Rather the regulations require the Department only to use an average of three months payments. If the child support fluctuates enough that there is a large change in income, the Claimant can report that to the Department. However, the Department is not required by BEM 505 to recalculate the FAP budget every month to account for fluctuations in child support payments. Likewise, the Department is not required to account for unexpected changes that are not expected to continue. The claimant also is obligated to communicate known changes that will affect the amount of the payments for the future.

The FAP budgets for August and September 2009 were not recalculated, accordingly, those budgets should be recalculated using the most current information available to the Department regarding child support payments received by the claimant.

Based upon the foregoing facts and relevant law, it is found that the Department's redetermination regarding FAP benefits for January, 2009 through July, 2009 is AFFIRMED. The Department's FAP determination for August and September, 2009 is REVERSED.


DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the Department properly calculated Claimant's FAP benefits for the period January, 2009 through July, 2009. However, the Department is still required to recalculate FAP benefits pursuant to Judge Lack's 9/22/09 Order for the period of August and September, 2009.

Accordingly, it is ORDERED:

1. The Department's recalculation of claimant's FAP benefits for the period January 2009 through July 2009 is AFFIRMED.

2. The Department is directed to recalculate Claimant's FAP budgets for the months of August 2009 and September 2009 utilizing the most current child support information available.
3. The Department shall supplement the Claimant for any lost benefits she was otherwise entitled to receive.


Jeanne M. VanderHeide
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 03/09/10

Date Mailed: 03/11/10

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.

JV/dj

cc:

