

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: 2010-12889
Issue No: 3002
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 10, 2010
Livingston County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne L. Keegstra

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 February 10, 2010. The claimant personally appeared and provided testimony.

ISSUE

Did the department properly budget the 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. The claimant receives RSDI in the amount of \$1013 monthly. (Department Exhibit 1 – 3).

2. The department had budgeted the claimant's rent expense at \$685, but the claimant's actual obligation was only \$328, as she receives rent assistance from MSHDA in the amount of \$357. (Department Exhibit 4).

3. A child support search conducted by the department showed the claimant received \$333 in child support for each September and October, 2009. (Department Exhibit 5).

4. When these amounts were budgeted, the claimant's FAP benefits were reduced.

5. The claimant submitted a hearing request on November 25, 2009.

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).

Department policy states:

RETIREMENT, SURVIVORS, AND DISABILITY INSURANCE (RSDI) (AKA SOCIAL SECURITY BENEFITS)

All Programs

RSDI is available to retired and disabled persons, their dependents, and survivors of deceased workers.

Count the gross benefit amount as unearned income. PEM, Item 500, p. 29.

CHILD SUPPORT

Definitions

All Programs

Child support is the money paid by an absent parent(s) for the living expenses of his/her child(ren). Medical, dental, child care and educational expenses may also be covered.

Child support is income to the child for whom the support is paid.

Court-ordered child support may be either certified or direct. PEM, Item 500, p. 9.

Direct and Voluntary Support

All Programs

Count the total amount as unearned income.

Exclude any portion of a payment that a **court order** or **other legally binding agreement** requires sending directly to a creditor or service supplier. PEM, Item 500, p. 10.

INCOME DEDUCTIONS

FIP and SDA Only

Income deductions are available at both the member and the group level. Apply deductions in the order they are presented in this item. PEM, Item 518, p. 4.

Housing Expenses

Housing expenses include rent, mortgage, a second mortgage, home equity loan, required condo or maintenance fees, lot rental or other payments including interest leading to ownership of the shelter occupied by the FAP group.

The expense must be a continuing one. Payments that exceed the normal monthly obligation are **not** deductible as a shelter expense unless the payment is necessary to prevent eviction or foreclosure, **and** it has **not** been allowed in a previous FAP budget. Additional expenses for optional charges, i.e., carport, pets, etc. are **not** allowed. PEM, Item 554, p. 9.

MANDATORY HEAT AND UTILITY STANDARD

Heat Separate from Housing Costs

A FAP group which has a heat expense or contributes to the heat separate from rent, mortgage or condominium /maintenance payments, must use the Heat and Utility Standard. This standard covers all heat and utility costs except **actual utility expenses, i.e. installation fees**, etc. (See Actual Utilities in this item.) Do **not** prorate the Heat and Utility Standard even if the heat expense is shared.

FAP groups that qualify for the Heat and Utility Standard **do not** receive any other individual utility standards. PEM, Item 554, p. 11.

When determining eligibility for FAP benefits, the household's total income must be evaluated. All earned and unearned income of each household member must be included unless specifically excluded. PEM 500. The department included the claimant's gross amount of RSDI benefits (\$1013) and also her average child support received (\$333). The FAP program provides a deduction from earned income of 20% and a deduction for the cost of child care when necessary to enable a FAP household member to work. A standard deduction from income of \$132 is allowed. Certain non-reimbursable medical expenses above \$35 a month may be deducted for senior/disabled/veteran group members. Another deduction from income is provided if monthly shelter costs are in excess of 50% of the household's income after all of the other deductions have been allowed, up to a maximum of \$300 for non-senior/disabled/veteran households. PEM 500 and 554; Program Reference Manual, Table 255; 7 CFR 273.2.

In this case, the budgets that the department submitted to this Administrative Law Judge do not yet show the correction in the claimant's housing rent. The housing expense of \$685 is still being included for the claimant. The department does need to ensure that the current budgets are reflecting the rent expense of \$328, which is the claimant's actual rent responsibility.

Further, the claimant reported that she has stopped receiving child support. The budgets the department presented are currently including \$333 monthly as child support. Therefore, if the claimant is not receiving child support any more, the income should be removed.

The department also testified that the claimant's medical deduction will change as her expenses have changed slightly. The claimant does qualify to deduct medical expenses as she is part of a senior, disabled or veteran (SDV) household. Therefore, the department can re-average the claimant's medical expenses and include those in the budget.

Once the department includes these new amounts, 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 department shall issue benefits in accordance with these standards.

It is noted that the claimant had also requested a hearing on her Medical Assistance. However, at the hearing, the claimant testified that this was no longer an issue as there had not been any negative action on the MA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department improperly budgeted the claimant's FAP benefits.

Accordingly, the department's actions are REVERSED.

The department shall:

1. Initiate a new budgeting of the claimant's case, including the correct rent expense of \$328, determine if the claimant's child support expense should be removed, and use the new average of medical deductions.

2. Inform the claimant of the revised amount of FAP benefits she will receive.

SO ORDERED.

/s/
Suzanne L. Keegstra
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: April 20, 2010

Date Mailed: April 22, 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.

SLK 

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