

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: 2010-13511

Issue No: 3002

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

February 24, 2010

Van Buren 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 claimant's request for a hearing. After due notice, an in-person hearing was held on February 24, 2010. Claimant personally appeared and testified.

ISSUE

Did the department properly process claimant's April 28, 2009 Food Assistance Program (FAP) application?

FINDINGS OF FACT

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

- (1) On April 28, 2009, claimant applied for FAP (Department Exhibit #1, pgs 9-24).
- (2) Five months later, on September 14, 2009, the department requested income verifications necessary to determine whether claimant's household was FAP eligible at any time during the previous five months.

(3) On December 9, 2009, claimant filed a hearing request to protest the department's delayed application processing and FAP issuance amounts.

(4) Claimant's hearing was held in-person on February 24, 2010.

(5) The department's sole witness at hearing had no involvement in this case during application processing or personal knowledge of claimant's group size or the income used during application budgeting; however, this witness stipulated to the department's obvious erroneous delay in application processing (i. e., late Verification Checklist issuance).

(6) Additionally, the department's witness incorrectly testified claimant's FAP case was issued pro-rated daily benefits for a few days at the end of April 2009, then closed due to excess income.

(7) This testimony is completely inconsistent with claimant's testimony and with the verification she provided at hearing to support it, which shows her household actually received a [REDACTED] FAP issuance in May 2009 (Client Exhibit A, pg 1).

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:

At application and redetermination:

- . Thoroughly review all eligibility factors in the case.

Applications and redeterminations must be completed within the standards of promptness. See PAM 115, 210. PAM, Item 105, p. 11.

Verification is usually required at application/redetermination **and** for a reported change affecting eligibility or benefit level. PAM, Item 130, p. 1.

Obtaining Verification

All Programs

Tell the client what verification is required, how to obtain it, and the due date (see “**Timeliness Standards**” in this item). Use the DHS-3503, Verification Checklist, or for MA redeterminations, the DHS-1175, MA Determination Notice, to request verification. PAM, Item 130, p. 2.

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.

Count a wage advance as earnings when the employer actually pays it. Do NOT count the money withheld to offset the advance.

Count wages held by the employer at the request of the employee. However, wages held as a general practice by the employer are NOT income until actually paid.

Exception: Income received in one month that is intended to cover several months (e.g., contractual income) is considered available in each of the months covered by the income.

Count gross wages except as explained in this item for:

- . "EIC"
- . "Flexible Benefits"
- . "Strikers"
- . "Student's Earnings"

PEM, Item 500, p. 15.

The benefit month is the month an assistance payment covers. The income month is a calendar month in which countable income is received or anticipated. The income month is the same as the benefit month. PEM, Item 518, p. 1.

PROSPECTIVE BUDGETING/INCOME CHANGE PROCESSING

DEPARTMENT PHILOSOPHY

A group's benefits for a month are based, in part, on a prospective income determination. A "best estimate" of income expected to be received by the group during a specific month is determined and used in the budget computation.

Get input from the client whenever possible to establish this "best estimate" amount. The client's understanding of how income is estimated reinforces reporting requirements and makes the client an active partner in the financial determination process. PEM, Item 505, p. 1.

Available income: Income actually received or reasonably anticipated. Reasonably anticipated means that the amount of income can be estimated and the date of receipt is known. Available income includes garnisheed amounts and income received jointly. See PEM 500. PEM, Item 505, p. 1.

DEFINITIONS

Benefit month: The month an assistance benefit payment covers. For CDC, benefit month is the month in which the pay period ends. PEM, Item 505, p. 1.

Fluctuating income: Income received on a regular schedule but that varies from check to check, such as a waitress' income whose hours vary each week. PEM, Item 505, p. 1.

Contractual/Single Payment Income: Income that is received in one month(s) that is intended to cover more than one month. For example, a teacher on a yearly contract who is paid over the nine month school year; or the single payment distributed quarterly from casino profits. PEM, Item 505, p. 1.

Irregular income: Income that is not received on a regular schedule or that is received unpredictably, such as a person self-employed doing snow removal. PEM, Item 505, p. 2.

DETERMINING BUDGETABLE INCOME

FIP, SDA, CDC, FAP

Determine budgetable income using countable, available income for the benefit month being processed. PEM, Item 505, p. 2.

Past Months

Use actual gross income amounts received for past month benefits, converting to a standard monthly amount, when appropriate. See Standard Monthly Amount in this item.

Exception: Prospective income may be used for past month determinations when:

- . income verification was requested and received, and
- . payments were received by the client after verifications were submitted, and
- . there are no known changes in the income being prospected. PEM, Item 505, p. 2.

Current and Future Months

Prospect income using a “best estimate” of income expected to be received during the month (or already received). Seek input from the client to establish an estimate, whenever possible. PEM, Item 505, p. 2.

To prospect income, you will need to know:

- . the type of income and the frequency it is received (e.g., weekly),
- . the day(s) of the week paid,
- . the date(s) paid, and
- . the gross income amount received or expected to be received on each pay date. PEM, Item 505, p. 2.

Change in Amount

When the income amount changes, adjust the amount(s) being budgeted for future pay periods.

For earned income:

- . If the rate of pay changes, but hours are expected to remain the same, use the past hours worked times the new rate of pay to determine the amount to budget for future pay periods.
- . If there is a change in expected hours, but no change in the rate of pay, use the expected hours times the rate of pay to determine the amount to budget per pay period.

If payments in the new amount have been received and they are accurate reflections of the future income, use them in the budget for future months.

For changes in self-employment income, determine the monthly gross income to budget based on discussion with the client of what he/ she expects to receive on average per month. PEM, Item 505, p. 6.

Starting Income

For starting income, use the best available information to prospect income for the benefit month. This may be based on expected work hours times the rate of pay. Or if payments from the new source have been received, use them in the budget for future months if they accurately reflect future income.

If the payment is not hourly, use information from the source (e.g., from the employer on the DHS-38), along with information from the client, and/or any checks the client may already have received to determine the prospective amount.

For starting self-employment income, determine the **monthly** gross income to budget based on discussion with the client of what he/ she expects to receive on average per month. PEM, Item 505, pp. 6-7.

Stopping Income

For stopping income, budget the final income expected to be received in the benefit month. Use the best available information

to determine the amount of the last check expected. Use information from the source and from the client. Remove stopped income from the budget for future months. PEM, Item 505, p. 7.

Standard Monthly Amount

Stable and Fluctuating Income

A standard monthly amount must be determined for each income source used in the budget.

Convert stable and fluctuating income that is received more often than monthly to a standard monthly amount. Use one of the following methods:

- . Multiply weekly income by 4.3.
- . Multiply amounts received every two weeks by 2.15.
- . Add amounts received twice a month.

This conversion takes into account fluctuations due to the number of scheduled pays in a month.

Exception: Do not convert income for the month income starts or stops if a full month's income is not expected in that month. Use actual income received or income expected to be received in these months. PEM, Item 505, p. 7.

WHEN TO COMPLETE A BUDGET

FIP, SDA, CDC, FAP

Client reporting requirements **do not** necessarily affect when a budget must be completed.

Complete a budget when:

- . the department is made aware of or the client reports a change in income that will affect eligibility or benefit level, or
- . a reported change results in the need to convert income to or from a standard monthly amount. PEM, Item 505, p. 8.

OVERISSUANCE

FIP, SDA, CDC, FAP

There is no overissuance based on an incorrect prospective budget unless:

- . the client withheld information or provided false information,
- . the department failed to act on known information in a timely manner, or
- . the department made a mathematical error.

If an overissuance did occur, see PAM 700 for instructions. **Use actual income instead of projected income when processing a budget for a past month, when that income source is the reason the OI occurred. Convert the income to a standard monthly amount, when appropriate.**

Note: For FAP overissuances only, income is not converted to a monthly amount when an overissuance occurred in the benefit month because:

- . the client failed to properly report income, or
- . the department failed to act timely on income learned of via a tape match.

Non-simplified reporting groups must report changes within ten days of when they become aware of the change. For establishing an overissuance, treat the date the client received a payment with the new amount as the date a client became aware of the change.

For starting income, the client must report the employment start date within 10 days of the job start. (See PAM 105.) PEM, Item 505, p. 10.

FAP INCOME BUDGETING

DEPARTMENT POLICY

This item applies **only to FAP**

A non-categorically eligible Senior/Disabled/Veteran (SDV) FAP group must have income below the net income limits. PEM, Item 550, p. 1.

Always calculate income on a calendar month basis to determine eligibility and benefit amounts. Use income from a month specified in this item for the benefit month being considered.

Budget the entire amount of earned and unearned countable income. Gross countable earned income is reduced by a 20% earned income deduction. Every case is allowed the standard deduction shown in RFT 255. PEM, Item 550, p. 1.

Granting a Hearing

All Programs

AH may grant a hearing about any of the following:

- . Denial of application and/or supplemental payments
- . Reduction in the amount of program benefits or services
- . Suspension or termination of program benefits or services
- . Restrictions under which benefits or services are provided
- . Delay of any action beyond standards of promptness
- . For **FAP only**, the current level of benefits or denial of expedited service

This Administrative Law Judge finds the department's FAP action was deficient at the threshold level due to an unexplained initial processing delay well beyond the department's FAP standard-of-promptness for application processing. Furthermore, the department was deficient in proving their FAP budgeting was correct based on the verifications claimant provided when the department requested them over the period between April and October 2009 (See Department Exhibit #3). As such, the department's actions cannot stand.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department improperly processed claimant's April 28, 2009 FAP application.

Accordingly, the department's actions are REVERSED and this case is returned to the local office for monthly FAP benefit recalculation during the disputed period (April-October, 2009) in accordance with the above-referenced rules. **SO ORDERED.**

/s/ _____
Marlene B. Magyar
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: March 1, 2010


Date Mailed: March 2, 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

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