

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: 201014026
Issue No: 3015
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 3, 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 February 3, 2010. The Claimant appeared and testified along with his wife, [REDACTED]. Stephanie Howard, ES appeared on behalf of the Department.

ISSUE

Whether the Department properly denied the Claimant's Food Assistance Program ("FAP") benefits effective 10/10/09 based on excess income?

FINDINGS OF FACT

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

1. The Claimant applied for FAP Benefits on 6/10/09.
2. A food assistance gross income test budget was completed which indicated that Claimant had excess income. (Exhibit 1, p. 3).

3. The Department denied Food Assistance Benefits on October 10, 2009 due to excess income.
4. Claimant testified that Claimant has a household group of two (2) people who all purchase and prepare food together.
5. The Claimant did not contest that he and his wife earned income as reported by the Department for the month of July.
6. The Claimant testified, however, that he and his wife are both full time students who work several jobs primarily during school breaks. Claimant indicated that due to the fluctuation in income, he has been charging groceries until another break in school.
7. Claimant submitted a copy of his 2009 taxes indicating that his total yearly income for 2009 was \$17,634.00. (Exhibit 2).
8. Claimant objected to the FAP denial and filed this appeal. The Department received the Claimant's Request for Hearing on 12/11/09.

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 Bridges 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. Income

received in one month that is intended to cover several months (for example contractual income) is considered available in each of the months covered by the income. BEM 501. Fluctuating income is income received on a regular schedule but that varies from check to check, such as a waitress' income whose hours vary each week. Id. Irregular income is income that is not received on a regular schedule or that is received unpredictably, such as a person self-employed doing snow removal. Id. at 2.

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. The Department should 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. BEM 505, p. 1. Prospective income may be used for past month determinations when all of the following are true:

- Income verification was requested and received.
- Payments were received by the client after verifications were submitted.
- There are no known changes in the income being prospected.

BEM 505, p. 2. For irregular income, the Department must determine the standard monthly amount by adding the amounts entered together and dividing by the number of months used. BEM 505, p. 7.

In the present case, Claimant testified credibly that he and his wife work sporadically during the periods that they are not enrolled in school. In support, Claimant provided a 2009 tax return which showed his total gross income for the year as \$17,634.00. This is also supported by averaging the pay received in July over the previous seven months. The Department prospectively determined earned income based on the month of July without determining that the

income would vary greatly during the time that the Claimant and his wife were enrolled in school. Based on Claimant's 2009 tax returns, Claimant's household received an average of \$1,469.00 per month. This would place Claimant below the \$1,517.00 income limit for a group size of two. RFT 250. Therefore, Claimant qualifies for FAP benefits.

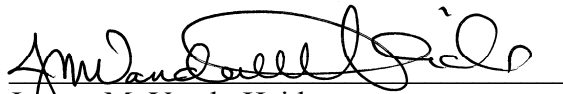
Accordingly, The Administrative Law Judge finds that the Department's determination is REVERSED.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the Department improperly denied the Claimant FAP benefits.

Accordingly, it is ORDERED:

1. The Department's FAP denial of 10/10/09 is REVERSED.
2. The Department shall reopen and reprocess Claimant's FAP case from the date of application, 6/10/10 prospecting income based on the 2009 tax returns.
3. The Department shall supplement Claimant with any lost benefits he 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.

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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

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