

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: 2010-14092
Issue No: 3015
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 10, 2010
Ottawa County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

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. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's Food Assistance Program (FAP) benefits based upon its determination that claimant had excess income?

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 October 12, 2009, claimant filed an application for Food Assistance Program benefits for himself and his wife.

(2) During an interview, claimant stated that his wife receives a pension of \$890 per month and he received unemployment compensation benefits in the amount of \$774 every two weeks.

(3) The department caseworker used the 2.15 multiplier for biweekly amounts to the claimant's unemployment compensation benefits and came up with an amount of \$1,664 and added claimant's wife \$890 in pension to the amount for a total of \$2,554 per month in gross unearned income.

(4) The department determined that claimant had excess income for purposes of Food Assistance Program benefits eligibility.

(5) On December 1, 2009, the department caseworker sent claimant notice that his application was denied for excess income.

(6) On December 3, 2009, claimant filed a request for a hearing to contest the department's negative action.

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).

For purposes of Food Assistance Program benefits, the department caseworker was charged with counting all of claimant's countable income. The group composition and program budgeting items specifies whose income to count. The program budgeting items might also contain program specific income deductions and 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. 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 are taken is called the gross amount. PEM, Item 500, p. 1. Income remaining after applying the policy in this item is called countable income. Count all income that is not specifically excluded. PEM, Item 500, p. 1.

In the instant case, the Food Assistance Program budget counted claimant's gross unearned income in the amount of \$774 times the 2.15 multiplier as required by policy for unemployment compensation benefits for an amount of \$1,664. The department then added \$890 in pension benefits for claimant's wife for a total unearned gross monthly income of \$2,554. The caseworker gave the claimant and his wife the standard deduction of \$132 which left claimant with an adjusted gross income of \$2,422. The caseworker then gave claimant a housing deduction and a heat and utility standard deduction in the maximum amount which allowed claimant an excess shelter deduction in \$459 which left claimant with a net monthly income of \$1,963.

The federal regulations at 42 CFR 273.2 have prepared a Food Assistance Program income limits table which is set forth at the Program Reference Manual, Table 260. The table provides that a household income of two persons with a net income of \$1,963 is not eligible to

receive Food Assistance Program benefits. The two person household net income limit for Food Assistance Program benefits in the Program Reference Manual, Table 260 is \$1,526. The department properly counted claimant's unemployment compensation benefits and pension benefit amounts. The department's action must be upheld.

Claimant's allegation that his other expenses are too high and he should be eligible for Food Assistance Program benefits is a compelling equitable argument to be excused from department policy requirements.

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

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department of Human Services properly denied claimant's Food Assistance Program benefit application based upon its determination that claimant had excess unearned income.

Accordingly, the department's decision is AFFIRMED.

/s/ _____
Landis Y. Lain
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: February 12, 2010

Date Mailed: February 16, 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.

LYL/vmc

cc:

