

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

██████████

Claimant

Reg. No.: 201014422

Issue No.: 3015, 5100

Case No.:

Load No.:

Hearing Date:

May 7, 2010

Wayne 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 held on May 7, 2010 from Detroit, Michigan. The Claimant appeared and testified.

██████████ FIM, ██████████ ES and ██████████ Lead Worker appeared for the Department.

ISSUE

Whether the Department properly denied the Claimant's State Emergency Relief ("SER") and Food Assistance Program ("FAP") benefits due to 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. The Claimant filed an application for SER benefits on 11/9/09, 11/13/09 and 11/15/09 for a new furnace. These applications were denied as no estimates of repair were submitted.

2. Claimant applied for SER again on 12/8/09 and submitted estimates of repair. (Exhibit 1, pp. 13-14).
3. During the course of processing the 12/8/09 SER application, it was determined that Claimant owns a building consisting of 4 flats, in which she lives in one of the flats. Claimant owns another building consisting of 2 flats.
4. Therefore, the Department ran a new FAP budget based on income from Claimant's rental property which revealed that Claimant had excess income. Exhibit 1, pp. 3-5.
5. Claimant testified that, at the time of the FAP closure, she had tenants under lease for the following rent obligations in her two buildings:

4 Flat Building

- a. \$500.00/month lease
- b. Claimant occupies one flat
- c. Two flats empty

2 Flat Building

- a. \$550.00 per month lease
- b. \$625.00 per month lease (renter was not paying)

6. The Claimant testified to a \$477.40 mortgage obligation on the building in which she lives, including taxes and insurance. Claimant is also responsible for her own utilities and water and sewage for the building.
7. The Claimant testified to a mortgage on the other building of \$800.77 at the time of application, along with \$1200 per year in taxes and \$2400 per year in homeowner's insurance.
8. On December 11, 2009, the Department denied FAP benefits due to excess income. The Department denied SER benefits because the new furnace request was for the two flat building and Claimant does not live there.
9. Claimant has a group size of one.

10. On December 18, 2009, the Department received the Claimant's Request for Hearing protesting the denial of the SER application and the FAP closure.

CONCLUSIONS OF LAW

A. SER

The State Emergency Relief ("SER") program is established by 2004 PA 344. The SER program is administered pursuant to MCL 400.10, *et seq.* and by final administrative rules filed with the Secretary of State on October 28, 1993. MAC R 400.7001-400.7049. The Department of Human Services' [formally known as the Family Independence Agency] policies are found in the State Emergency Relief Manual ("ERM").

State Emergency Relief ("SER") prevents serious harm to individuals and families by assisting applicants with safe, decent, affordable housing and other essential needs when an emergency situation arises. ERM 101, p. 1. SER helps to prevent loss of a home if no other resources are available and the home will be available to provide safe shelter for the SER group in the foreseeable future. SER also assists with home repairs to correct unsafe conditions and restore essential services, including energy-related home repairs. ERM 304, p. 1. Repair or replacement of a non-functioning furnace is currently the only allowable energy-related home repair. The lifetime maximum for energy-related home repairs is \$4,000. ERM 304, p. 2.

In this case, the Claimant filed a State Emergency Relief application seeking assistance for a furnace repair or replacement. Unfortunately, Claimant testified that the furnace repair was for an apartment building owned by Claimant but not resided in by Claimant. Therefore, the home would not have been providing Claimant shelter in the foreseeable future and as such, Claimant did not qualify for SER assistance. Accordingly, based upon the foregoing facts and relevant law, it is found that the Department's SER denial is AFFIRMED.

B. FAP

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 Reference Tables (“RFT”).

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. PEM/BEM 550. Under 7 CFR 273.9, as amended, \$135.00 is deducted from the gross income of FAP recipients in determining FAP grants. Under 7 CFR 273.9 deductions for excess shelter are also made. PEM/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.

Rental income is money an individual (landlord) receives for allowing another individual (renter) to use the landlord's property. It includes income from a lease. Bridges counts the gross rent payment minus allowable expenses as unearned income. Bridges allows the higher of the following:

- 10% of the rental payment.
- The landlord's actual expenses if the landlord chooses to claim and verify the expenses.

BEM 504, p. 1. When a landlord rents out part of his own dwelling to another individual Bridges counts the gross rent payment minus expenses as earned income from self-employment.

Bridges allows the higher of the following:

- 60% of the rental payment.
- Actual rental expenses if the landlord chooses to claim and verify the expenses.

BEM 504, p. 2. Expenses must be the landlord's obligation and must solely be expenses of the rental property to be allowed. Allowable expenses may include:

- Real estate insurance
- Repairs
- Heat
- Utilities
- Property taxes
- Lawn care
- Snow removal
- Furniture

BEM 504, p. 3.

When calculating the benefit amount, according to PEM/BEM 556, the Shelter set offs are added together to equal A. The income after deductions is divided by two and equals B. $A - B = C$. The lesser of C or the maximum shelter amount set forth in RFT 255 will be deducted from the reduced income in determining the final net amount. The amount of food assistance allotment is established by regulations at 7 CFR 273.10 based on a group's net income.

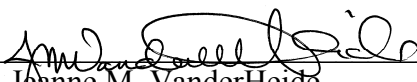
In the present case, it appears that the Department calculated Claimant's FAP benefit utilizing only the gross income of Claimant's leased properties without offsetting for any costs. Claimant's income should have been 10% of rent payments from the 2 person flat (\$500 + \$625) and 60% of the rent payments from the 4 person flat where Claimant lives (\$550.00) as the Department did not have proof of Claimant's expenses at the time of the decision. Claimant's countable rental income, therefore, is \$455.50.

In the present case, according to the aforementioned policy on budgeting, Claimant's shelter costs equal $\$477 + \$555 = \$1032.00$ (A). 50% of the income less deductions = $\$801$ (B). $(A-\$1032)-(B-\$801)=\$231.00$. Claimant, therefore, has a net monthly income of $\$1371.00$. This was obtained by subtracting the standard deduction of $\$132.00$ and the excess shelter amount of $\$231.00$ from the gross income of $\$1734.00$. As a result, Claimant's group net income is over the income limits of $\$903.00$ per month for a SDV group size of one person. RFT 250. Therefore, Claimant does not qualify for FAP benefits. Claimant is entitled to reapply for FAP using actual allowable expenses of the rental properties as set forth above.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the Department properly denied the Claimant's SER and FAP benefits based on excess income.

Accordingly, the Department's denial of SER and FAP benefits is AFFIRMED.

/s/ 

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

Date Signed: May 28, 2010

Date Mailed: May 28, 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.

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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/hw

cc:

