

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: 20101822
Issue No: 3002; 3003
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 12, 2009
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

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 hearing was held on November 17, 2009.

ISSUE

Did the Department correctly remove claimant's shelter allowance from the expense budgeting of claimant's FAP allotment?

FINDINGS OF FACT

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

- (1) Claimant applied for FAP on July 1, 2009.
- (2) Claimant turned in a DHS-3688, Shelter Verification on July 29, 2009.
- (3) This verification showed that the claimant paid \$650 per month in rent.
- (4) The claimant's caseworker had reason to believe that the shelter verification form filled out was false.

- (5) Claimant's landlord was contacted by the caseworker.
- (6) Claimant's caseworker was only able to ask the landlord a single question before they were disconnected for unknown reasons.
- (7) Claimant's caseworker decided that this was evidence of a falsification of shelter expenses and disallowed the shelter expense on claimant's FAP budget.
- (8) Claimant's FAP budget was determined to be \$34.
- (9) Claimant filed for hearing on August 25, 2009, alleging that DHS incorrectly computed her budgets by failing to include her shelter expenses.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

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. BEM, Item 500. A standard deduction from income of \$135 is allowed for each household. 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. BEM, Items 500 and 554; RFT 255; 7 CFR 273.2.

Shelter expenses are allowed when the FAP group has a shelter expense or contributes to the shelter expense. Shelter expenses are to be verified at application and when a change is reported. If the client fails to verify a reported change in shelter, remove the old expense until the new expense is verified. BEM 554.

Acceptable shelter verification sources include, but are **not** limited to: DHS-3688, Shelter Verification form, and cancelled checks, receipts or money order copies, if current. The receipt must contain minimum information to identify the expense, the amount of the expense, the expense address if verifying shelter, the provider of the service and the name of the person paying the expense. BEM 554.

The Department argued in their testimony that while the claimant provided an acceptable verification when she turned in the DHS-3688, this verification was unacceptable because it could not be verified itself.

The Administrative Law Judge points out that no regulation or policy requires the verification of a verification; a claimant must only verify the information contained in her application, and one method to do that is through a DHS-3688.

That being said, policy does allow an expense to be disallowed if the claimant is unable to verify that expense; furthermore, BAM 130 states that verification can be required when a verification factor is unclear or inconsistent. However, that was not at issue in the current case.

The DHS-3688 in question contained claimant's rental amount and was signed by a person claiming to be a manager for the property owner. It contained claimant's address and the tax ID# of the property owner, as well as the rental amounts in question. The verification was clear and consistent, and contained nothing that would ordinarily present itself as suspicious.

However, claimant's caseworker testified at hearing that she had a "gut feeling" that the verification in question was misleading or false. The caseworker further testified that this "gut

feeling” was based upon her own subjective interpretations of claimant’s ability to live by herself.

There is nothing in the regulations that prevents a caseworker from following up on a verification in order to determine its authenticity. The Administrative Law Judge will even go so far as to defer to the caseworker in question’s years of experience in determining when to follow up on a verification form. However, in order to disallow a properly provided verification form, a caseworker must present definitive evidence showing that the verification was false. A feeling or hunch, no matter the experience level of caseworker in question, is no substitute for proof.

The Department pointed to two things in support of the contention that the provided verification was false: 1) The property owner listed on the verification form is not the same owner as listed in the City of Detroit Property Tax records, and; 2) the caseworker’s claim that the landlord “hung up” on her when she tried to call to get further verification. The Administrative Law Judge finds neither of these reasons as sufficient to disallow a verification form.

With respect to the discrepancy of the property tax records, the undersigned does not believe that the mismatch can be a deciding factor in any way. The property could have been sold recently; the records provided in evidence show that the property was originally sold for tax delinquency, and the property could have easily been resold. The records could be a mistake; this would not be unheard of. The investment company that owns the property could have changed their name. A discrepancy, while odd, proves nothing.

However, and more importantly, a discrepancy in the tax records does nothing to address the far more relevant fact of whether the claimant actually lives at that address, and pays rent. There may indeed be a serious discrepancy in the tax records, but this fact only implicates the landlord, and not the claimant. A discrepancy does nothing to disprove the fact that the claimant

verified that she was paying \$650 per month in rent. It may be the case that claimant is not paying the rental amount to the true owner of the property, but this does not mean that the claimant is not paying rent.

With regard to the Department's contention that the landlord hung up on the caseworker when the caseworker tried to question him, the caseworker testified under oath that she had no real proof that this was the case. The caseworker stated that she called the contact number provided upon the shelter verification at the number provided; a person answered the phone, and gave a name that was not listed on the verification, and then the call was promptly disconnected.

This is not proof that the landlord hung up on the caseworker. In this age of mobile technology, dropped calls have become a facet of every day life. Disconnections happen, and a disconnected call does not necessarily mean that the other party purposefully hung up on the caller. The caseworker pointed to the fact that the person who answered the phone gave a name different than the manager listed upon the shelter verification. This fact also does not constitute proof; the person answering the phone may have been a clerical assistant, friend, or a host of other plausible people. Furthermore, this was the only call made; when the disconnection occurred, the caseworker did not attempt to call the manager a second time, and instead, took this disconnection and name discrepancy as proof positive that the claimant's shelter verification was false. This is not the case; the disconnection is only proof that a disconnection occurred, and no other conclusions can be reached.

Finally, as with the property tax discrepancy, the Administrative Law Judge notes that even if the conclusions the Department reached were absolutely correct, they would have no bearing as to whether the claimant actually lived at said residence, and paid rent there. The Department has provided no evidence with regard to this central issue.

The Department's testimony consisted largely of speculation, with no real proof that the shelter verification had been forged. Neither of the Department's reasons for disallowing the shelter verification form focused on whether or not claimant was actually paying the rent at the shelter as alleged. Therefore, the undersigned is unable to award the Department sufficient credibility to affirm their actions at hand.

In contrast, claimant's father testified that claimant does pay rent at the address, and submitted rental receipts as proof. He further testified that while claimant does stay over at her sister's house several nights of the week, she does maintain a residence at the house in question. In absence of any contradicting proof, that Administrative Law Judge must hold that claimant does live at the residence, and the Department was wrong to deny the expense in claimant's FAP budget calculations.

The undersigned would note that this does not mean that claimant is actually maintaining a residence; however, claimant has provided the necessary verification forms and the Department have provided no evidence disproving these verification forms. Should the Department harbor suspicions, there are legitimate avenues to pursue, including the request of an OIG investigation as to residency. In the absence of such legitimate avenues, however, the undersigned is unable to rely upon hunches, no matter how based in experience they are.

Thus, the Administrative Law Judge has reviewed the budgets and finds that the department improperly computed the claimant's gross income. The excess shelter expense must be deducted from claimant's adjusted gross income. PEM 500. 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. By allowing a shelter deduction, claimant will likely be eligible to receive a higher allotment of FAP benefits.

Therefore, the Administrative Law Judge must decide that the budgets as presented are in error. Claimant was correct when she maintained that her shelter expense should be counted.

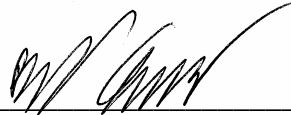
The FAP allotment was computed incorrectly.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department's decision to allot claimant FAP benefits in the amount of \$34 by disallowing claimant's shelter expense was incorrect.

Accordingly, the Department's decision is REVERSED.

The Department is ORDERED to recalculate claimant's FAP budget retroactively to the date of case action, allowing the shelter expense and issuing appropriate supplemental benefits in accordance with Bridges Eligibility Manual.



Robert J. Chavez
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 01/04/10

Date Mailed: 01/08/10

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.

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.

RJC/dj

2010-1822/RJC

cc:

