

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: 2010-20670
Issue No: 3002; 3014
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 17, 2010
Ingham County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne L. Keegstra

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 March 17, 2010. The claimant personally appeared and provided testimony.

ISSUE

Did the department properly budget the claimant's Food Assistance Program (FAP) benefits?

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 applied for FAP benefits on October 8, 2009.
2. The department completed a budget for the claimant which included a group size of one and resulted in a \$16 monthly FAP benefit. (Department Exhibit 5).

3. The claimant receives RSDI in the amount of \$1376 monthly. (Department Exhibit 9).

4. The claimant pays \$525 in rent expense and receives the \$555 heat/utility standard. (Department Exhibit 4).

5. The claimant submitted a hearing request on February 5, 2010.

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).

Department policy states:

RETIREMENT, SURVIVORS, AND DISABILITY INSURANCE (RSDI) (AKA SOCIAL SECURITY BENEFITS)

All Programs

RSDI is available to retired and disabled persons, their dependents, and survivors of deceased workers.

Count the gross benefit amount as unearned income. PEM, Item 500, p. 29.

INCOME DEDUCTIONS

FIP and SDA Only

Income deductions are available at both the member and the group level. Apply deductions in the order they are presented in this item. PEM, Item 518, p. 4.

Earned Income Disregard

Deduct \$200 from each person's countable earnings. Then deduct an additional 20% of each person's remaining earnings. The total disregard cannot exceed countable earnings. Apply this disregard separately to each program group member's earned income. PEM, Item 518, p. 4.

A non-categorically eligible, non-SDV FS group must have income below the gross and net income limits. PEM, Item 550, p. 1.

Use **only** available, countable income to determine eligibility. PEM 500 defines countable income. PEM 505 defines available income and income change processing. This item describes income budgeting policy. 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.

Housing Expenses

Housing expenses include rent, mortgage, a second mortgage, home equity loan, required condo or maintenance fees, lot rental or other payments including interest leading to ownership of the shelter occupied by the FAP group.

The expense must be a continuing one. Payments that exceed the normal monthly obligation are **not** deductible as a shelter expense unless the payment is necessary to prevent eviction or foreclosure, **and** it has **not** been allowed in a previous FAP budget. Additional expenses for optional charges, i.e., carport, pets, etc. are **not** allowed. PEM, Item 554, p. 9.

MANDATORY HEAT AND UTILITY STANDARD

Heat Separate from Housing Costs

A FAP group which has a heat expense or contributes to the heat separate from rent, mortgage or condominium /maintenance payments, must use the Heat and Utility Standard. This standard covers all heat and utility costs except **actual utility expenses, i.e. installation fees**, etc. (See Actual Utilities in this item.) Do **not** prorate the Heat and Utility Standard even if the heat expense is shared.

FAP groups that qualify for the Heat and Utility Standard **do not** receive any other individual utility standards. PEM, Item 554, p. 11.

FOOD ASSISTANCE PROGRAM GROUP COMPOSITION

DEPARTMENT POLICY

You must determine who is included in the Food Assistance Program (FAP) group prior to evaluating the nonfinancial and financial eligibility of everyone in the group.

To establish FAP group composition determine:

1. Who lives together.
2. The relationship(s) of the people who live together.
3. Whether the people living together purchase and prepare food together or separately, and
4. Whether the person(s) resides in an eligible living situation. (See “LIVING SITUATIONS” in this item.)

PEM, Item 212, p. 1.

Primary Caretaker

The **Primary Caretaker** is the person who is primarily responsible for the child’s day-to-day care and supervision in the home where the child sleeps more than half of the days in a calendar month, on average, in a twelve-month period. PEM, Item 212, p. 1.

DETERMINING PRIMARY CARETAKER

When a child spends time with multiple caretakers who do not live together (e.g., joint physical custody or parent/grandparent),

determine a Primary Caretaker. Only one person can be the Primary Caretaker and the other caretaker(s) is considered the Absent Caretaker(s). The child is **always** in the FAP group of the Primary Caretaker. If the child's parent(s) is living in the home, he/she must be included in the FAP group.

Exception: If otherwise eligible, the Absent Caretaker may receive FAP benefits for the child, when the child is visiting the Absent Caretaker for more than 30 days (i.e., not temporarily absent from the Primary Caretaker's home).

Determine a Primary Caretaker by using a twelve-month period. The twelve-month period begins when a Primary Caretaker determination is made. To determine the Primary Caretaker:

- . Ask the client how many days the child sleeps at his/her home in a calendar month.
- . Accept the client's statement unless questionable or disputed by another caretaker.

Note: When a caretaker works during a child's normal sleep hours, include the nights the child sleeps away from home when due solely to the caretaker's employment as nights slept in the home of the caretaker. See Example 3.

- . If Primary Caretaker status is questionable or disputed, verification is needed.
- . Allow both caretakers to provide evidence supporting his/her claim.
- . Base your determination on the evidence provided by the caretakers. See "Verification Sources."
- . Document who the Primary Caretaker is, in the case record.

If the child spends virtually half of the days in each month, averaged over a twelve-month period with each caretaker, the caretaker who applies and is found eligible first, is the Primary Caretaker. The other caretaker(s) is considered the Absent Caretaker(s). PEM, Item 212, p. 3.

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. PEM 500. A standard deduction from income of \$132 is allowed. 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. PEM 500 and 554; Program Reference Manual, Table 255; 7 CFR 273.2. The claimant is being given the proper rent expense of \$525 and the heat/utility standard of \$555.

In this case, the Administrative Law Judge has reviewed the FAP budget and finds that the department properly computed the claimant's net income. The "SOLQ report" shows the claimant is receiving a gross, monthly RSDI benefit in the amount of \$1376. 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. The issuance table provides that a household with household size and net income of the claimant is eligible for an FAP allotment of \$16.

The claimant is also disputing that his children were not included in the program group. The claimant testified that the custody arrangement is that he gets the children every Wednesday after school (but not for the night) and every other weekend. Department policy indicates that a primary caretaker must be determined for FAP purposes. BEM 212. The primary caretaker is the person primarily responsible for the child's day-to-day care and supervision in the home where the child sleeps more than half of the days in a calendar month, on average, in a twelve-month period. BEM 212. In this case, it becomes clear that the custody agreement places the children in their mother's house for more than half the days in a calendar month. Thus, the department properly determined the claimant was not eligible to receive FAP for his children.

It is noted that if the custody arrangement is not being followed and the claimant does have the children for more than half the calendar days in a month, he can provide a custody order or some other acceptable proof of a custody change. That will allow the department to redetermine custody status.

The claimant also indicated that he requested a hearing on an SER issue on his hearing request. However, the claimant testified that this was not an issue, as he had gotten help with the sewer and heating. Thus, the hearing did not cover this issue as the claimant indicates he has no further issues with the SER decision.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department properly budgeted the claimant's FAP benefits.

Accordingly, the department's action are UPHELD. SO ORDERED.

/s/ _____
Suzanne L. Keegstra
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: April 5, 2010

Date Mailed: April 6, 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.

SLK [REDACTED]

cc:

[REDACTED]