

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.: 2010-22070
Issue No.: 3003
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
March 25, 2010
Wayne County DHS (73)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 from Detroit, Michigan on March 25, 2010. The Claimant appeared and testified. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, appeared and testified.

ISSUE

Whether DHS properly calculated Claimant's income in determining Claimant's Food Assistance Program (FAP) benefits effective 3/1/10?

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 was an ongoing FAP recipient.
2. On 1/29/10 Claimant submitted a Semi-Annual Contact Report (DHS-1046)
3. Claimant's gross employment income from 1/12/10 was \$135.96.

4. Claimant's gross employment income from 1/26/10 was \$841.33.
5. Claimant is paid bi-weekly for her employment.
6. Claimant submitted verifications of her 1/12/10 and 1/26/10 pays with her DHS-1046.
7. DHS disregarded the 1/12/10 and 1/26/10 in calculating Claimant's income and claimed the checks were not representative of Claimant's income
8. Claimant's income fluctuates greatly due to mandatory days off by her employer.
9. DHS calculated Claimant's earned income to be \$1522 for 3/2009
10. DHS calculated the \$1522 based on employment information submitted in 10/2009.
11. The \$1522 income resulted in reduced FAP benefits for Claimant beginning 3/2010.
12. Claimant submitted a Hearing Request on 2/8/10 regarding reduction of her FAP benefits.

CONCLUSIONS OF LAW

The Food Assistance Program, formerly known as the Food Stamp 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, 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).

Claimant disputes how DHS calculated Claimant's income while determining Claimant's FAP benefits. BEM 505 advises how to budget non-child support income; it reads, "Use income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month." DHS found that the check stubs submitted by Claimant with her DHS-1046 did

not accurately reflect Claimant's income. DHS based the decision on a previously submitted Employment Verification (DHS-38) which verified Claimant worked 32.5 hours per week.

Claimant makes \$11.33 per hour; the \$841.33 check reflects an average of over 37 hours worked per week; the \$135.96 check reflects an average of six hours worked per week. Checks averaging 37 hours and 6 hours are far enough from 32.5 hours to make DHS believe that neither check adequately represented Claimant's future income. It is found that DHS appropriately used their discretion in disregarding Claimant's 1/2010 income verifications.

Relying on Claimant's previously submitted DHS-38 is also an appropriate use of discretion by DHS. BEM 505 states for earned income, "If there is a change in expected hours, but no change in the rate of pay, use the expected hours times the rate of pay to determine the amount to budget per pay period." It is found DHS appropriately relied on information from a DHS-38 to prospect Claimant's income.

Claimant contends that she often works significantly less than 32.5 hours per week. Claimant's 1/2010 checks tend to confirm Claimant's contention. Claimant submitted a hearing request on 2/8/10 after receiving the notice of her redetermined benefits. The hearing request did not specifically state what Claimant protested, but it should have served as notice that DHS might not have been using the best method to prospect Claimant's income. Claimant also made calls to DHS regarding the complaint of how her income was prospected. Though it is found that DHS appropriately prospected income based on the information they had, once Claimant reported that her income was inaccurately budgeted, DHS had the responsibility to reconsider how Claimant's income was prospected. It is found that DHS did not update Claimant's income based on Claimant reporting that her hours were significantly less than what was reported on the DHS-38.

Whether DHS updates Claimant's income using the 30 days of 1/2010 check stubs or a 60 or 90 day period is left within the discretion of DHS based on past or future discussions with Claimant. However, after Claimant reported to DHS that she often works less than 32.5 hours/week, it is found that DHS had the obligation to either discuss the matter with Claimant to determine if 32.5 hours/week was an appropriate method to budget Claimant's FAP benefits or request verifications which would support Claimant's contention of working less than 32.5 hours/week.

DECISION AND ORDER

The actions taken by DHS are REVERSED. The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS improperly reduced Claimant's FAP case beginning 3/2010. It is ordered that DHS shall request any needed verifications, if any, from Claimant to recalculate Claimant's income for her 3/2010 FAP benefits.



Christian Gardocki
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 4/6/2010

Date Mailed: 4/6/2010

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.

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cc:

