

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.: 201025162

Issue No.: 3019

Case No.:

Load No.:

Hearing Date:

May 6, 2010

Oakland 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 received by the Department on February 5, 2010. After due notice, a telephone hearing was conducted from Detroit, Michigan on May 6, 2010. The Claimant appeared and testified. ██████████ FIM and ██████████, ES, appeared on behalf of the Department.

ISSUE

Whether the Department properly denied the Claimant's Food Assistance Program ("FAP") benefits due to a failure to timely return verifications?

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 11/24/09.

2. On January 15, 2010 the Department mailed a verification checklist to Claimant requesting verification of self employment with a due date of January 25, 2010. (Exhibit 1, pp. 4-5).
3. The Department contacted the Claimant on 1/25/10 upon which time Claimant indicated that he was no longer employed. The Department then requested proof of loss of employment, plus verification for wages for the past 30 days. The verification due date was extended until 1/29/09.
4. At the hearing Claimant testified that he was a 1099 contractor for an insurance company but that his contract with the company was terminated on November 11, 2009.
5. Claimant testified that he faxed over proof of loss of his insurance contract on 1/26/10. (Exhibit 2, pp. 6-7).
6. The Department testified that Claimant failed to provide verification of his employment ending and the Department denied Claimant FAP benefits effective January 30, 2010 for failure to submit verifications.
7. On February 10, 2009, the Department received the Claimant's Request for Hearing protesting the denial of FAP benefits.
8. At the hearing, the Department raised the issue of the circumstances of Claimant's termination and indicated that Claimant would not have been entitled to FAP as he was fired.
9. Claimant testified that he was unable to receive unemployment benefits as he was self employed.

CONCLUSIONS OF LAW

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”).

Clients must cooperate with the local office in determining initial and ongoing eligibility to include the completion of the necessary forms. BAM 105, p. 5. Verification means documentation or other evidence to establish the accuracy of the client’s verbal or written statements. BAM 130, p. 1. Clients are allowed 10 calendar days (or other time limit specified in policy) to provide the requested verifications. BAM 130, p. 4. If the client cannot provide the verification despite a reasonable effort, the time limit should be extended no more than once. BAM 130, p. 4. A negative action notice should be sent when the client indicates a refusal to provide the verification or the time period provided has lapsed and the client has not made a reasonable effort to provide it.

Michigan’s FAP Employment and Training program is voluntary and penalties for noncompliance may only apply in the following two situations:

- Client is active FIP/RAP and FAP and becomes noncompliant with a cash program requirement without good cause.
- Client is pending or active FAP only and refuses employment (voluntarily quits a job, is fired or voluntarily reduces hours of employment) without good cause.

At no other time is a client considered noncompliant with employment or self-sufficiency related requirements for FAP. BEM 233B. If the client is noncompliant, the Department is instructed to

hold a triage to determine if there was good cause for the FAP based on the information known at the time of the determination. *Id.*

An individual who runs his own business is self-employed. It is sometimes difficult to determine if an individual's income should be entered in the earned income or self-employment. The Department is to make a determination based on available information using the following guidelines which are considered to be indicators of self-employment:

- The individual sets own work hours.
- The individual provides own tools used on the job.
- The individual is responsible for the service being provided and for the methods used to provide the service.
- The individual collects payment for the services provided from the individual paying for them.

A client need not meet all of the above to be considered self-employed. BEM 502, p. 2. Countable income from self-employment equals the total proceeds minus allowable expenses of producing the income. BEM 502, p.3. Allowable expenses are the higher of 25 percent of the total proceeds, or actual expenses if the client chooses to claim and verify the expenses. *Id.*

Irregular income is income that is not received on a regular schedule or that is received unpredictably, such as a person self-employed doing snow removal. *Id.* at 2. A group's benefits for a month are based, in part, on a prospective income determination. A best estimate of income expected to be received by the group during a specific month is determined and used in the budget computation. The Department should get input from the client whenever possible to establish this best estimate amount. The client's understanding of how income is estimated reinforces reporting requirements and makes the client an active partner in the financial determination process. BEM 505, p. 1. Prospective income may be used for past month determinations when all of the following are true:

- Income verification was requested and received.
- Payments were received by the client after verifications were submitted.
- There are no known changes in the income being prospected.

BEM 505, p. 2. For irregular income, the Department must determine the standard monthly amount by adding the amounts entered together and dividing by the number of months used.

BEM 505, p. 7.

In the subject case, the initial information provided by the Claimant at application reveals that he was self-employed. Claimant is licensed as a resident producer for insurance as of 1/24/07. Claimant testified that he is still licensed. Claimant was an active producer for insurance up until 11/11/09 when his insurance appointments from [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] were all cancelled. However, there is no indication that the cancellation of these insurance appointments would prohibit Claimant from obtaining insurance work from other companies. Generally, the nature of self-employment leads to ebbs and flows in the amount of work and income. The Administrative Law Judge, therefore, finds that Claimant was self-employed at the time of application for FAP benefits.

As Claimant was self-employed, the proper verifications requested should have been income and expenses and/or tax returns from which income could have been prospectively calculated. The initial verification request does ask for self employment records including income tax records with receipts and business records with receipts. However, when the Department and Claimant discussed the verifications on 1/25/10 an extension was granted and Claimant testified that he submitted the proof of his insurance appointments being cancelled rather than the self employment records originally requested.

Claimant testified that he faxed the cancellation of the insurance appointments to the Department on 1/26/10. The cancellation has a print date of 1/26/10 at the bottom and a hand written notice that it was faxed at 8:35 a.m. However, there is no printed fax confirmation. The Department's copy shows at the top that it was faxed from 248-583-8842 (the local office) on 5/6/10 (the hearing date). Just below that it shows that it was faxed from 248-557-7141 on 2/8/10. A reverse phone number look up reveals that this is a landline from or very near the Claimant's street address in [REDACTED] Michigan. The undersigned, therefore, finds that the fax was not received by the Department until 2/8/10 which was 10 days after the due date. Had it been received timely, the Department would have had an obligation to follow up and obtain additional information regarding Claimant's self employment income as the insurance appointment cancellation was not sufficient.

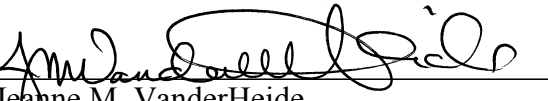
In addition, the Department indicated at the hearing that Claimant's FAP benefits would have been denied anyway as Claimant was fired from his job. Claimant's employment termination can only be used to deny him benefits if pending FAP benefits, he refused employment (including being fired from a job) without good cause. In the subject case, the evidence reveals that Claimant lost his insurance contract prior to applying for FAP. Accordingly, BEM 233B would not apply. If Claimant had been refused employment while his FAP benefits were pending, then a notice of a triage should have issued and a good cause determination made.

Regardless, the real question in this case was whether Claimant would have qualified for FAP benefits based on a prospective calculation of his self employment earnings. Claimant did not turn in timely verifications in order to make that determination. Accordingly, based on the relevant facts and foregoing law, it is found that the Department's denial of the Claimant's FAP benefits is AFFIRMED.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the Department properly calculated the Claimant's FAP allotment.

Accordingly, the Department's FAP eligibility determination is AFFIRMED.

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

Date Signed: May 21, 2010

Date Mailed: May 21, 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.

JV/hw

cc:

