

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.: 2010-25690
Issue No.: 3003
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
April 8, 2010
Macomb County DHS (12)

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 April 8, 2010. Claimant appeared and testified; [REDACTED] also appeared and testified on behalf of Claimant. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, appeared and testified.

ISSUE

Whether Claimant's employment income is self-employment income for purposes of calculating 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. Claimant was an ongoing FAP recipient.
2. Claimant received wages from [REDACTED].

3. DHS previously classified [REDACTED] income as self-employment and allowed Claimant to offset his income with self-employment expenses.
4. Beginning 3/2010, DHS stopped classifying Claimant's [REDACTED] income as self-employment which caused Claimant to have excessive income for FAP benefits because self-employment expenses were no longer budgeted.
5. Claimant submitted a hearing request on 3/4/10 regarding closure of 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 (formerly known as the Family Independence Agency) 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 Reference Tables Manual (RFT).

Claimant receives income as a food distributor. Claimant is the owner of a [REDACTED] franchise. [REDACTED] receives food orders from customers. [REDACTED] then forwards the orders to Claimant for delivery. [REDACTED] sells and provides the food for Claimant's deliveries. Claimant makes the deliveries based on his own schedule and using his own vehicle. Claimant receives gross pay checks from [REDACTED] based on orders delivered. Claimant's checks from [REDACTED] are for the total amount paid by customers and are not reduced by Claimant's cost of the food that [REDACTED] provides or any expenses involved in the delivery of the food.

DHS testified that the sole basis for classifying Claimant's income as self-employment was that Claimant received pay checks from [REDACTED] [REDACTED] directly paying Claimant for services tends to show that Claimant is not self-employed; however, it is not a conclusive factor.

BEM 502 provides guidance on whether to classify income as self-employment. It reads, "An individual who runs their own business is self-employed." Claimant and Claimant's spouse credibly testified that Claimant runs his own business. Claimant's paystubs from [REDACTED] are payments to "[REDACTED].", not "[REDACTED]". Because Claimant's income from [REDACTED] is to Claimant's business name, not his individual name, it tends to show that Claimant is self-employed.

BEM 502 reads as follows regarding how whether to classify income as self-employment:

It is sometimes difficult to determine if an individual's income should be entered in the earned income or self-employment LUW. Make a determination based on available information and document your rationale. Use the following guidelines to help make that determination; consider the following 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.

In Claimant's circumstances, Claimant determines when to make deliveries and sets his own hours, Claimant uses his own vehicle for deliveries, Claimant is responsible for making deliveries and how the deliveries are performed. All of these factors tend to show that Claimant is self-employed. Though Claimant is paid by [REDACTED] and not directly by customers, Claimant's income is paid to his business name which is evidence of self-employment. The

payment also does not account for significant expenses which also tend to prove that Claimant is self-employed. It is found that Claimant's [REDACTED] income is self-employment income.

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 failed to classify Claimant's income as self-employment income. It is ordered that DHS shall request any needed verifications for Claimant's employment income and expenses to rebudget Claimant's FAP benefits beginning 3/2010.

Christian Gardocki

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

Date Signed: 4/13/2010

Date Mailed: 4/13/2010

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.

CG/jlg

cc:

[REDACTED]