

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: 201027772
Issue No: 3003
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 15, 2010
Washtenaw County DHS

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

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 April 15, 2010. Claimant appeared and testified.

ISSUE

Did the Department of Human Services properly calculate that Claimant was not eligible for Food Assistance Program (FAP) benefits and deny her application?

FINDINGS OF FACT

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

- (1) On January 15, 2010, Claimant applied for Food Assistance Program (FAP) benefits.
- (2) On February 3, 2010, Claimant was sent a Notice of Case Action (DHS-1605) denying her application for Food Assistance Program (FAP) benefits. The reason for the denial was excess income.

(3) On March 24, 2010, Claimant submitted a request for hearing.

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 Program Reference Manual (PRM).

In this case the contested issue is whether or not Claimant's husband is self-employed. Department policy provides the following guidance for case workers. The Department's policies are available on the internet through the Department's website.

INCOME FROM SELF-EMPLOYMENT

DEPARTMENT POLICY

All Types of Assistance (TOA)

This item identifies all of the following:

- Guidelines for determining if an individual's income is considered to be from employment or self-employment.
- Allowable expenses of producing self-employment income.
- Self-Employment income types.

To create a new self-employment income record, go to the income questions screen and answer **yes** to the self-employment question. This will add the self-employment Logical Unit of Work (LUW) to the driver flow and cause Bridges to consider the income.

LOGICAL UNIT OF WORK (LUW)

The self-employment LUW is composed of a series of data collection screens in Bridges. Completion of the LUW is required to collect the data needed to determine countable income from self-employment for each TOA.

Data entered in a LUW is not saved until the LUW is completed and saved. There are tabs across the top of the Bridges screen that identify the screens contained within the LUW.

Income data entered is not considered in the Bridges eligibility result until the user runs eligibility determination/benefit calculation (EDBC). Income data does not affect benefit issuance until the eligibility results are certified for a program.

SELF-EMPLOYMENT

All TOA

An individual who runs their own business is self-employed. This includes but is not limited to selling goods, farming, providing direct services, and operating a facility that provides services such as adult foster care home or room and board.

A person who provides child care in their own home is self employed, including but not limited to, a CDC licensed or relative home. An individual who provides child care in the child's home such as an aide is an employee of the child's parent/substitute parent and is not considered self-employed.

Rental income is sometimes counted as unearned income and sometimes self-employment. Enter all types of rental income in the rental/room and board LUW. Bridges will determine income type and countable portion based on program policy rules. See BEM 504, INCOME FROM RENTAL/ROOM AND BOARD.

EMPLOYMENT OR SELF-EMPLOYMENT INCOME?

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.

Do **not** consider the following in making the determination:

- Withholding of income tax from payment made to individual.
- Whether or not the individual files income tax.
- Whether or not individual receives a federal form 1099.

Example 1: Joe has a contract with the local hospital to provide snow removal services. He drives his own snow removal vehicle and pays for his own gas. The hospital pays him directly based on the number of times his services are used. Joe is self-employed.

Example 2: Jane is a hair dresser at a salon. The salon supplies all the products she uses on the job. Jane's clients pay the salon for the services Jane provides. Jane receives a paycheck from the salon each week for 50 percent of the income from her clients. For income budgeting purposes, Jane is an employee of the salon and her income should be entered in the earned income LUW; not the self-employment LUW.

Example 3: Rich provides home help care for his elderly neighbor, Sam. Sam receives assistance through DHS' Independent Living Services (Adult Home Help) program to pay for Rich's services. Rich is an employee of Sam and his income should be entered in the earned income LUW; **not** the self employment LUW.

Example 4: Mary Jo is a massage therapist at a local chiropractor's office. She uses a room in the office and uses their table. She provides her own oils and linens used for the massages and sets her own hours. She collects payment directly from the clients and pays the chiropractor's office \$10 for each massage provided. Mary Jo is self-employed. (BEM 502)

Claimant's husband drives a tractor trailer truck. He leases the truck from [REDACTED] and makes deliveries for them. He designates what days he will work but then the deliveries he makes are determined by [REDACTED]. He is not paid directly at pick up or delivery for the transportation of goods. He is credited a gross wage based almost entirely on the miles he drives and fuel surcharges. For maintenance and repairs to the truck he is directed to a location for the services and the cost is charged against his gross wages. Insurance, truck specific taxes, and fuel are also paid by [REDACTED] and charged against his gross wages. [REDACTED] is paying child support for him and deducting it against his gross wages. He is allowed to draw advances to be charged against his gross wages.

Applying the limited guidance in Department policy:

[REDACTED] appears to have autonomy regarding how much time he takes off but daily truck driving hours are closely regulated by the Department of Transportation and the only way to make more income than imposed expenses is to rack up miles. For a truck driver autonomy over working hours is not a very good indicator for determining whether they are employees or self-employed.

While he is technically leasing the truck, he does not have autonomy over insuring, maintaining, or choosing the routes he drives. [REDACTED] is not providing the tools (truck) used for the job.

The service being provided and the method of it are dictated by [REDACTED] With the exception of which days [REDACTED] drives, all aspects of price, pick up, operation of the truck, and delivery are controlled by [REDACTED]

[REDACTED] does not collect payment for the delivery services at pick up or delivery.

It is noted that [REDACTED] formulated the business model under which [REDACTED] works. The year end list showing all of the categories of deductions against gross wages seem to be geared more toward isolating [REDACTED] from any legal liability caused or created by [REDACTED] during operation of their truck than to give him the benefits and responsibilities of an independent contractor.

The Department has correctly designated [REDACTED] as an employee. Even though it is apparent that [REDACTED] does not have control over the gross wages attributed to him by [REDACTED] Department policy specifies that gross wages be used in determining Food Assistance Program (FAP) eligibility. There is no exception in Department policy for [REDACTED] employment circumstances.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department of Human Services properly calculated that Claimant was not eligible for Food Assistance Program (FAP) benefits and denied her application.

It is ORDERED that the actions of the Department of Human Services, in this matter, are UPHELD.

/s/ _____
Gary F. Heisler
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: April 19, 2010

Date Mailed: April 20, 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.

GFH/alc

cc:

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