

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: 2010-29192  
Issue No: 3002  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
June 8, 2010  
Ingham County DHS

ADMINISTRATIVE LAW JUDGE: Kevin Scully

HEARING DECISION

This matter is before the undersigned Administrative Law Judge by authority of MCL 400.9 and MCL 400.37. Claimant's request for a hearing was received on March 9, 2010. After due notice, a telephone hearing was held on Tuesday, June 8, 2010. The Claimant was present at the hearing and was represented by her attorney.

ISSUE

Whether the Department of Human Services (Department) properly determined the Claimant's Food Assistance Program (FAP) eligibility?

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 was receiving FAP benefits.

(2) For the month of November 2009, the Claimant's husband received earned income in the gross weekly amount of [REDACTED]. The Claimant did not submit one of her husband's paychecks for November 2009. Department Exhibit 6.

(3) For the month of December 2009, the Claimant's husband received earned income in the gross weekly amount of [REDACTED]. Claimant Exhibits 19 - 22.

(4) The Claimant receives earned income in the gross monthly amount of [REDACTED]. Department Exhibit 8.

(5) The Claimant receives self-employment income in the gross monthly amount of [REDACTED]. Department Exhibit 10.

(6) The Department completed a FAP budget, which determined the Claimant was not eligible for FAP benefits as of March 1, 2010, due to excess income. Department Exhibit 10.

(7) The Department received the Claimant's request for a hearing on March 9, 2010, protesting the reduction of her FAP benefits.

#### CONCLUSIONS OF LAW

The Food Assistance Program (FAP) (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 (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), Reference Table Manual (RFT), and the Bridges Reference Manual (BRM).

For FAP purposes, all earned and unearned income available to the Claimant is countable. Earned income means income received from another person or organization or from

self-employment for duties for duties that were performed for compensation or profit. Unearned income means all income that is not earned, including but not limited to funds received from the Family Independence Program (FIP), State Disability Assistance (SDA), Child Development and Care (CDC), Medicaid (MA), Social Security Benefits (RSDI/SSI), Veterans Administration (VA), Unemployment Compensation Benefits (UCB), Adult Medical Program (AMA), alimony, and child support payments. The amount counted may be more than the client actually receives because the gross amount is used prior to any deductions. BEM 500.

The Department determines a client's eligibility for program benefits based on the client's actual income and/or prospective income. Actual income is income that was already received. Prospective income is income not yet received but expected. Prospective budgeting is the best estimate of the client's future income. BEM 505.

All income is converted to a standard monthly amount. If the client is paid weekly, the Department multiplies the average weekly amount by 4.3. If the client is paid every other week, the Department multiplies the average bi-weekly amount by 2.15. BEM 505.

Countable income from self-employment equals the total proceeds minus allowable expenses of producing the income. If allowable expenses exceed the total proceeds, the amount of the loss cannot offset any other income except for farm loss amounts. BEM 502. Allowable expenses include all of the following:

- Identifiable expenses of labor, stock, raw material, seed, fertilizer, etc.
- Interest and principal on loans for equipment, real estate or income-producing property.
- Insurance premiums on loans for equipment, real estate and other income-producing property.

- Taxes paid on income-producing property.
- Transportation costs while on the job (example: fuel).
- Purchase of capital equipment.
- A childcare provider's cost of meals for children. Do not allow costs for the provider's own children. BEM 502.

Expenses that are not allowable include the following:

- A net loss from a previous period.
- Federal, state and local income taxes.
- Personal entertainment or other individual business expenses.
- Money set aside for retirement.
- Depreciation on equipment, real estate or other capital investments. BEM 502.

In this case, the Claimant's husband started employment in November of 2009, and the Claimant submitted verification of three of the four paychecks he received that month. The paychecks were in the gross amounts of [REDACTED], for a total of [REDACTED]. The Claimant submitted verification of all her husband's paychecks for the month of December of 2009. The paychecks were in the gross amounts of [REDACTED], for a total of [REDACTED].

The Department completed a FAP budget, which determined that the Claimant was not eligible for FAP benefits as of March 1, 2010. The Department's budget included a total income of [REDACTED] which includes self-employment income of [REDACTED], earned income of [REDACTED] for the Claimant, and earned income of [REDACTED] for the Claimant's husband. An adjusted gross income of [REDACTED] is determined by subtracting a 20% earned income deduction and a standard deduction of [REDACTED] from the total income. The Claimant's excess shelter deduction of [REDACTED] is

determined by adding her [REDACTED] monthly shelter expense to the [REDACTED] standard heat and utility deduction, and subtracting 50% of her adjusted gross income.

The Department determined the Claimant's net income of [REDACTED] by subtracting the excess shelter expense from her adjusted gross income. The net income limit for a group of three is [REDACTED], and because the Claimant's net income exceeds this amount, the Department determined that she was not eligible for FAP benefits.

The Claimant's attorney argued that the Department incorrectly determined her husband's earned income. The Department testified that because the Claimant did not submit complete verification documents of her husband's income, it used an average of the paychecks that were available. The Department testified that prospective earned income for the purposes of determining FAP eligibility might be higher than the actual income received. Prospective budgeting is the method the Department uses to determine future income, which is used to determine eligibility for benefits in future months.

The Department's records of the husband's earned income show he received a budgeted amount of [REDACTED] for November of 2009, and [REDACTED] for the following three months. The November earned income is simply the total of the three paychecks submitted to the Department as verification of income for that month. The total of the four paychecks the Claimant's husband's received in December of 2009 is [REDACTED], which is less than the amount the Department used to determine used in the Claimant's FAP budget.

The Department testified that it used the best information available to determine the Claimant's income, which was necessary because the Claimant did not submit all of her husband's paychecks for the month of November 2009.

However, the Department has not demonstrated how it determined a monthly gross income of [REDACTED] from the information submitted by the Claimant. Therefore, the Department had not established that it correctly determined the Claimant's eligibility for FAP benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department failed to establish that it properly determined the Claimant's eligibility for FAP benefits.

Accordingly, the Department's FAP eligibility determination is REVERSED. It is further ORDERED that the Department shall:

- (1) Initiate a determination of the Claimant's eligibility for FAP benefits as of March 1, 2010.
- (2) Issue the Claimant any retroactive benefits she may be eligible for, if any.
- (3) Notify the Claimant in writing of the Department's revised eligibility determination.

/s/ \_\_\_\_\_  
Kevin Scully  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: June 25, 2010


Date Mailed: June 28, 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.

KS/vc

cc:

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