

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: 2010-35702
Issue No: 3002
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
June 15, 2010
Saginaw 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 April 22, 2010. After due notice, a telephone hearing was held on Tuesday, June 15, 2010.

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 applied for FAP benefits as a group of four.
- (2) The Claimant receives monthly [REDACTED] payments from the [REDACTED] in the gross monthly amount of [REDACTED]

(3) The Claimant receives monthly Unemployment Compensation in the gross monthly amount of [REDACTED].

(4) The Department included funds received from the [REDACTED] program in a FAP budget on April 22, 2010, which determined that the Claimant was not eligible to receive FAP benefits.

(5) The Department received the Claimant's request for a hearing on April 22, 2010, protesting the denial of his FAP application.

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 fore than the client actually receives because the gross amount is used prior to any deductions. BEM 500.

The Department counts all on-the-job training (OJT) income as earned income, except for income received under the Summer Youth Employment and Training Program and payments from the Workforce Investment Act that are not for OJT. BEM 510. Training income that is not specifically addressed in policy is countable earned income. BEM 510.

The Claimant's group of four receives income from the [REDACTED] program in the gross monthly amount of [REDACTED] and Unemployment Compensation in the gross monthly amount of [REDACTED], for a total monthly income of [REDACTED]. An adjusted gross income of [REDACTED] determined by reducing this amount by an earned income deduction of 20% of the [REDACTED] earnings, and the standard deduction of [REDACTED]. The Claimant's excess shelter deduction of [REDACTED] is determined by adding his monthly housing expenses of [REDACTED] to the heat and utility standard of [REDACTED] under the Low Income Home Energy Assistance Program, and subtracting 50% of his adjusted gross income.

The Claimant's net income of [REDACTED] is the difference between his adjusted gross income and his excess shelter deduction. The maximum net income a group of four can receive and remain eligible for FAP benefits is [REDACTED], and therefore the Department denied the Claimant's FAP application.

The Claimant argued that his [REDACTED] benefits should not be counted as income for the purposes of determining his eligibility to receive FAP benefits, because the Internal Revenue Service (IRS) does not treat it as taxable income. The Department of Veterans Affairs considers funds received under the [REDACTED] program to be a health care benefit available only by a physician's prescription.

The Claimant argued that other FAP recipients do not have funds received under the [REDACTED] program considered as income for the purposes of determining FAP eligibility. Whether

the Department has correctly applied its policy to other FAP recipients is not relevant to the Claimant's situation. However, the claimant's grievance centers on dissatisfaction with the department's current policy. The claimant's request is not within the scope of authority delegated to this Administrative Law Judge. Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations, or make exceptions to the department policy set out in the program manuals. Furthermore, administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940).

The Department considers all earned and unearned income for the purposes of determining whether a person is eligible for FAP benefits, and it is not relevant whether the income received is taxable by the IRS. The Department has established that it determined the Claimant's eligibility for FAP benefits in accordance with policy.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department acted in accordance with policy in determining the Claimant's FAP eligibility.

The Department's FAP eligibility determination is **AFFIRMED**. It is **SO ORDERED**.

/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

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