

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: 2010-44979
Issue No: 3002
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 25, 2010
Washtenaw County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne L. Keegstra

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 August 25, 2010. The claimant personally appeared and provided testimony.

ISSUE

Did the department properly budget the claimant's 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. In February, 2010, the department discovered the claimant had Section 8 housing assistance and her actual rent obligation was only \$76. The department had previously been budgeting the full \$699 of rent. Once the proper amount was budgeted, the claimant's FAP benefits decreased. (Department Exhibit 30, 36)

2. The claimant receives RSDI monthly in the amount of \$674, although this varies somewhat with the amount of earned income she receives. (Department Exhibit 20 – 22)

3. The claimant works for [REDACTED] and earns some monthly income. (Department Exhibit 16 – 18, 31)

4. The claimant did not turn in receipts to verify medical expenses until July 16, 2010. (Department Exhibit 5 – 15)

5. Once the medical documentation was verified and entered, the claimant's FAP benefits increased to \$154 monthly. (Department Exhibit 2 – 3, 40)

6. The claimant submitted a hearing request on March 17, 2010.

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).

Department policy states:

INCOME

DEPARTMENT POLICY

All Programs

The group composition and program budgeting items specify whose income to count. The program budgeting items might also contain program-specific income deductions or disregards.

Income means benefits or payments measured in money. It includes money a person owns even if NOT paid directly such as stock dividends automatically reinvested and income paid to a representative.

Earned income means income received from another person or organization or from self-employment for duties that were performed for remuneration or profit. Unearned income means all income that is NOT earned income. The item specifies whether the income is earned or unearned.

The amount of income counted may be more than the amount a person actually receives, because it is the amount before any deductions including deductions for taxes and garnishments. The amount before any deductions is called the **gross** amount. BEM, Item 500, p. 1.

Wages

All Programs

Wages are the pay an employee receives from another person or organization. Wages include salaries, tips, commissions, bonuses, severance pay and flexible benefits plan funds.

Count an employee's regular wages paid during a vacation or illness as earned income.

Count a wage advance as earnings when the employer actually pays it. Do NOT count the money withheld to offset the advance.

Count wages held by the employer at the request of the employee. However, wages held as a general practice by the employer are NOT income until actually paid.

Exception: Income received in one month that is intended to cover several months (e.g., contractual income) is considered available in each of the months covered by the income.

Count gross wages except as explained in this item for:

- . "EIC"
- . "Flexible Benefits"
- . "Strikers"
- . "Student's Earnings"

BEM, Item 500, p. 15.

RETIREMENT, SURVIVORS, AND DISABILITY INSURANCE (RSDI) (AKA SOCIAL SECURITY BENEFITS)

All Programs

RSDI is available to retired and disabled persons, their dependents, and survivors of deceased workers.

Count the gross benefit amount as unearned income. PEM, Item 500, p. 29.

PROSPECTIVE BUDGETING/INCOME CHANGE PROCESSING

DEPARTMENT PHILOSOPHY

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.

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, Item 505, p. 1.

DEPARTMENT POLICY

FIP, SDA, CDC and FAP

A group's financial eligibility and monthly benefit amount are determined using:

- . actual income (income that was already received), and/or
- . prospected income amounts (not received but expected).

Only countable income is included in the determination (see BEM 500).

Each source of income is converted to a standard monthly amount, unless a full month's income will not be received (see Standard Monthly Amount in this item). BEM, Item 505, p. 1.

Fluctuating income: Income received on a regular schedule but that varies from check to check, such as a waitress' income whose hours vary each week. BEM, Item 505, p. 1.

DETERMINING BUDGETABLE INCOME

FIP, SDA, CDC, FAP

Determine budgetable income using countable, available income for the benefit month being processed. BEM, Item 505, p. 2.

Past Months

Use actual gross income amounts received for past month benefits, converting to a standard monthly amount, when appropriate. See Standard Monthly Amount in this item.

Exception: Prospective income may be used for past month determinations when:

- . income verification was requested and received, and
- . payments were received by the client after verifications were submitted, and
- . there are no known changes in the income being prospected. BEM, Item 505, p. 2.

Current and Future Months

Prospect income using a "best estimate" of income expected to be received during the month (or already received). Seek input from the client to establish an estimate, whenever possible. BEM, Item 505, p. 2.

To prospect income, you will need to know:

- . the type of income and the frequency it is received (e.g., weekly),
- . the day(s) of the week paid,
- . the date(s) paid, and
- . the gross income amount received or expected to be received on each pay date. BEM, Item 505, p. 2.

BUDGETING INCOME

Use the following guidelines to budget income.

Non-Child Support Income

Using Past Income

Use past income to prospect income for the future unless changes are expected:

- . Use income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month.

Note: The 30-day period used can begin up to 30 days before the interview date or the date the information was requested.

Discard a pay from the past 30 days if it is unusual and does not reflect the normal, expected pay amounts. Document which pay is being discarded and why. For example, the client worked overtime for one week and it is not expected to recur.

- . Use income from the past 60 or 90 days for fluctuating or irregular income, if:
 - .. the past 30 days is not a good indicator of future income, and
 - ..
 - .. the fluctuations of income during the past 60 or 90 days appear to accurately reflect the income that is expected to be received in the benefit month.

Note: The 60 or 90-day period used can begin up to 60 or 90 days before the interview date or the date the information was requested. BEM, Item 505, pp. 5-6.

Standard Monthly Amount

Stable and Fluctuating Income

A standard monthly amount must be determined for each income source used in the budget.

Convert stable and fluctuating income that is received more often than monthly to a standard monthly amount. Use one of the following methods:

- . Multiply weekly income by 4.3.
- . Multiply amounts received every two weeks by 2.15.
- . Add amounts received twice a month.

This conversion takes into account fluctuations due to the number of scheduled pays in a month.

Exception: Do not convert income for the month income starts or stops if a full month's income is not expected in that month. Use actual income received or income expected to be received in these months. BEM, Item 505, p. 7.

INCOME DEDUCTIONS

FIP and SDA Only

Income deductions are available at both the member and the group level. Apply deductions in the order they are presented in this item. BEM, Item 518, p. 4.

Earned Income Disregard

Deduct \$200 from each person's countable earnings. Then deduct an additional 20% of each person's remaining earnings. The total disregard cannot exceed countable earnings. Apply this disregard separately to each program group member's earned income. BEM, Item 518, p. 4.

A non-categorically eligible, non-SDV FS group must have income below the gross and net income limits. BEM, Item 550, p. 1.

Use **only** available, countable income to determine eligibility. BEM 500 defines countable income. BEM 505 defines available income and income change processing. This item describes income budgeting policy. BEM, Item 550, p. 1.

Always calculate income on a calendar month basis to determine eligibility and benefit amounts. Use income from a month specified in this item for the benefit month being considered.

Budget the entire amount of earned and unearned countable income. Gross countable earned income is reduced by a 20%

earned income deduction. Every case is allowed the standard deduction shown in RFT 255. BEM, Item 550, p. 1.

Housing Expenses

Housing expenses include rent, mortgage, a second mortgage, home equity loan, required condo or maintenance fees, lot rental or other payments including interest leading to ownership of the shelter occupied by the FAP group.

The expense must be a continuing one. Payments that exceed the normal monthly obligation are **not** deductible as a shelter expense unless the payment is necessary to prevent eviction or foreclosure, **and** it has **not** been allowed in a previous FAP budget. Additional expenses for optional charges, i.e., carport, pets, etc. are **not** allowed. BEM, Item 554, p. 9.

MANDATORY HEAT AND UTILITY STANDARD

Heat Separate from Housing Costs

A FAP group which has a heat expense or contributes to the heat separate from rent, mortgage or condominium /maintenance payments, must use the Heat and Utility Standard. This standard covers all heat and utility costs except **actual utility expenses, i.e. installation fees**, etc. (See Actual Utilities in this item.) Do **not** prorate the Heat and Utility Standard even if the heat expense is shared.

FAP groups that qualify for the Heat and Utility Standard **do not** receive any other individual utility standards. BEM, Item 554, p. 11.

MEDICAL EXPENSES

Estimated Medical Expense

Estimate an SDV person's medical expenses for the benefit period. A FAP group may voluntarily, but cannot be required, to report changes during the benefit period.

Consider **only** the medical expenses of SDV persons in the eligible group or SDV persons disqualified for certain reasons. See **Expenses for Disqualified or Ineligible Persons** in this item.

The expense does **not** have to be paid to be allowed. Allow medical expenses when verification of the portion paid, or to be paid by insurance, Medicare, Medicaid, etc. is provided. Allow **only** the non-reimbursable portion of a medical expense.

Note: Any incurred current medical expense that is applied toward a Medicaid spend-down is also an allowable FAP medical expense. PEM, Item 554, p. 6.

Application and Redetermination

Estimate an SDV person's medical expenses for the benefit period. Base the estimate on:

- . verified medical expenses;
- . available information about the SDV member's medical condition and health insurance; and
- . changes that can be reasonably anticipated to occur during the benefit period. PEM, Item 554, pp. 6-7.

During the Benefit Period

Process changes during the benefit period **only** if they are:

- . voluntarily reported and verified during the benefit period (e.g., expenses reported and verified for MA spend-down); or
- . reported by another source **and** you have sufficient information and verification to determine the allowable amount **without** contacting the FAP group. PEM, Item 554, p. 7.

Allowable Medical Expenses

Allowable medical expenses are limited to the following:

- . Medical and dental care
- . Hospitalization or nursing care. Include these expenses for a person who was a group member, immediately prior to entering a hospital or nursing home
- . Prescription drugs and the postage form mail-ordered prescriptions

- . Costs of medical supplies, sickroom equipment (including rental) or other prescribed medical equipment (excluding the cost for special diets)
- . Over-the-counter medication (including insulin) and other health-related supplies (bandages, sterile gauze, incontinence pads, etc.) when recommended by a licensed health professional
- . Premiums for health and hospitalization policies (excluding the cost of income maintenance type health policies and accident policies, also known as assurances). If the policy covers more than one person, allow a prorated amount for the SDV person(s)
- . Medicare premiums
- . Dentures, hearing aids and prosthetics including the cost of securing and maintaining a seeing eye or hearing dog or other assistance animal. (Animal food and veterinary expenses are included.)
- . Eyeglasses when prescribed by an ophthalmologist (physician-eye specialist) or optometrist
- . Actual costs of transportation and lodging necessary to secure medical treatment or services. If actual costs **cannot** be determined for transportation, allow the cents-per-mile amount at the standard mileage rate for a privately owned vehicle in lieu of an available state vehicle.
- . The cost of employing an attendant, homemaker, home health aid, housekeeper, home help provider, or child care provider due to age, infirmity or illness. This cost must include an amount equal to the maximum FAP benefits for one person if the FAP group provides the majority of the attendant's meals. If this attendant care cost could qualify as both a medical expense and a dependent care expense, it **must** be treated as a medical expense. PEM, Item 554, pp . 7-8.

One-Time-Only Expenses

Average one-time-only medical expenses over the balance of the benefit period. Begin with the first benefit month the change can affect.

Exception: Groups that have 24-month benefit periods must be given the following options for one-time-only medical expenses billed or due within the first 12 months of the benefit period:

1. budget it for one month, or
2. average it over the remainder of the first 12 months of the benefit period, or
3. average it over the remainder of the 24 month benefit period.
PEM, Item 554, p. 8.

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VERIFICATION

Verify medical expenses including the **amount of reimbursement**, at initial application and redetermination. Verify reported changes in the source or amount of medical expenses if the change would result in an increase in benefits.

Do not verify other factors, unless questionable. Other factors include things like the allowability of the service or the eligibility of the person incurring the cost. PEM, Item 554, p. 9.

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VERIFICATION SOURCES

Acceptable verification sources include, but are not limited to:

- . Current bills or written statement from the provider, which show all amounts paid by, or to be paid by, insurance, Medicare or Medicaid
- . Insurance, Medicare or Medicaid statements which show charges incurred and the amount paid, or to be paid, by the insurer
- . DHS-54A, Medical or Dental Needs, completed by a licensed health professional
- . BENDEX for Medicare premiums
- . Written statements from licensed health care professionals

- . Collateral contact with the provider. (Most commonly used to determine cost of dog food, over the counter medication and health-related supplies, and ongoing medical transportation) PEM, Item 554, p. 9.

When determining eligibility for FAP benefits, the household's total income must be evaluated. All earned and unearned income of each household member must be included unless specifically excluded. BEM 500. The FAP program provides a deduction from earned income of 20%. A standard deduction from income of \$132 is allowed. Another deduction from income is provided if monthly shelter costs are in excess of 50% of the household's income after all of the other deductions have been allowed, up to a maximum of \$300 for non-senior/disabled/veteran households. BEM 500 and 554; Program Reference Manual, Table 255; 7 CFR 273.2. The department is now accurately budgeting the claimant's shelter expenses.

It is noted that the department was initially budgeting the claimant's rent expense as \$699. This was because the leasing manager of the apartment complex had indicated the claimant paid the full rent and did not indicate the rent was subsidized on a November 25, 2009 Shelter Verification form. However, the department received information in February, 2010 that the claimant's housing was subsidized and she only paid \$79 in rent expense. This (along with no verifications of medical expenses) caused the decrease in FAP benefits in March, 2010.

Department policy allows Senior, Disabled or Disabled Veteran to deduct medical expenses in a FAP budget. BAM 500. The claimant is disabled, so she does qualify to deduct her medical expenses in the FAP budget. However, the claimant did not provide receipts to allow the department to budget the expenses until July 16, 2010. This increased the claimant's August, 2010 FAP benefits.

The claimant questioned if the department was allowing a medical deductible for specific shoes that she buys, the over-the-counter supplements, a nebulizer and costs for her dog. The department did allow the receipts for the shoes, the supplements and the nebulizer. Once the claimant provided a statement from the physician indicating these items were medically necessary and the receipts were provided to the department, these items were all budgeted into the claimant's FAP budget. The only item the department denied was costs for the dog as the dog is not an official "service animal." The department did request clarification on this issue from Food and Nutrition Services (FNS), the governing federal entity for the FAP program. FNS did determine the dog did not meet the criteria for the claimant to be allowed to deduct the dog-related expenses in her FAP budget.

In this case, the Administrative Law Judge has reviewed the FAP budget and finds that the department properly computed the claimant's net income. The department averaged the claimant's employment income with [REDACTED] and averaged her RSDI, as it does change some months. The department has also properly allowed the claimant's verified medical expenses.

The federal regulations at 7 CFR 273.10 provide standards for the amount of a household's benefits. The department in compliance with the federal regulations has prepared issuance tables which are set forth at Program Reference Manual, Table 260. The issuance table provides that a household with household size and net income of the claimant is eligible for an FAP allotment of \$154, which was accurately computed by the department.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department properly budgeted the claimant's FAP benefits.

Accordingly, the department's actions are UPHeld. SO ORDERED.

/s/
Suzanne L. Keegstra
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: August 31, 2010

Date Mailed: August 31, 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.

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