

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: 2010-4504
Issue No: 3002; 2006
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
January 12, 2010
Jackson 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 January 12, 2010. The claimant personally appeared and provided testimony.

ISSUE

- (1) Did the department properly deny the claimants medical assistance (MA) application in August, 2009?
- (2) Did the department properly budget the claimants food assistance application (FAP) benefits beginning November, 2009?

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 MA on July 7, 2009.
2. On August 4, 2009, the department mailed the claimant a verification checklist (DHS-3503) which required the claimant to provide a current statement verifying her checking's

and savings account, proof of United States citizenship, proof of the value of her 401k, and the last 30 days of check stubs or earning statements. These items were due back to the department by August 14, 2009. (Department Exhibit 7, 8).

3. The claimant receives unemployment compensation in the amount of \$636 biweekly. (Department Exhibit 9, 10).

4. The claimant also receives child support income which the department averaged for the month of July, August and September and included in the food assistance budget. (Department Exhibit 11, 12, and 13).

5. When the claimant's unemployment compensation income and child support income was budgeted into the November 1, 2009 food assistances budget this resulted in a monthly benefit of \$92. The claimant was given rent expense of \$595 and the heat and utility standard of \$555.00 (Department Exhibit 15, 16, and 17).

6. On October 17, 2009, the claimant was mailed a Notice Of Case Action (DHS-1605). This notice informs the claimant that her children were approved for a Medicaid program but that she had been denied for Medicaid program. This notice also informed the claimant that her food assistance benefits were being reduced to \$92 per month. (Department Exhibit 1-6).

7. The claimant submitted a hearing request on October 26, 2009.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative

Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Department policy states:

Obtaining Verification

All Programs

Tell the client what verification is required, how to obtain it, and the due date (see “**Timeliness Standards**” in this item). Use the DHS-3503, Verification Checklist, or for MA redeterminations, the DHS-1175, MA Determination Notice, to request verification. PAM, Item 130, p. 2.

The client must obtain required verification, but you must assist if they need and request help. PAM, Item 130, p. 2.

Timeliness Standards

All Programs (except TMAP)

Allow the client 10 calendar days (**or** other time limit specified in policy) to provide the verification you request. If the client cannot provide the verification despite a reasonable effort, extend the time limit at least once. PAM, Item 130, p. 4.

FIP, SDA and MA

Primary evidence of citizenship is documentary evidence of the highest reliability that conclusively establishes that the person is a U.S. citizen. In general, obtain primary evidence of citizenship before using secondary evidence. PEM, Item 225, p. 17.

Primary Evidence

Primary evidence of citizenship is:

- A U.S. passport.
 - A Certificate of Naturalization (N-550 or N-570).
 - A Certificate of Citizenship (N-560 or N-561).
- PEM, Item 225, p. 17.

Secondary Evidence

Secondary evidence of citizenship is documentary evidence of satisfactory reliability that is used when primary evidence is not available. Secondary evidence is:

- . A U.S. public birth record showing birth in one of the 50 United States, District of Columbia, American Samoa, Swain's Island Puerto Rico (if born on or after January 13, 1941), Virgin Island of the U.S. (if born on or after January 17, 1917), Northern Mariana Islands (if born on or after November 4, 1986) or Guam (if born on or after April 10, 1899).
- . Certification of Report of Birth (DS-1350). The Department of State issues a DS-1350 to U.S. citizens in the U.S. who were born outside the U.S. and acquired U.S. citizenship at birth based on the information shown on the FS-240.
- . Consular Report of Birth Abroad of a Citizen of the United States of America (FS-240). Children born outside the U.S. to U.S. military personnel usually have one of these.
- . Certification of Birth Abroad (FS-545). Before November 1, 1990, Department of State consulates also issued Form FS-545 along with prior version of the FS-240. In 1990, U.S. consulates ceased to issue Form FS-545. Treat an FS-545 the same as the DS-1350.
- . United States Citizen Identification Card (I-197 or I-179). INS issued Form I-179 and I-197 to naturalized U.S. citizens living near the Canadian or Mexican borders who needed it for frequent border crossings. Although neither form is currently issued, either form that was previously issued is still valid.
- . American Indian Card (I-873). INS issued this form to a collectively naturalized citizen of the U.S. who was born in the Northern Mariana Islands before November 4, 1986. The card is no longer issued, but those previously issued are still valid.
- . Final adoption decree. The decree must show the child's name and U.S. place of birth. In situations where an adoption is not finalized and the state in which the child was born will not release a birth certificate prior to final adoption, a statement from a state approved adoption agency that shows the child's name and U.S. place of birth

is acceptable. The adoption agency must state in the certification that the source of the place of birth information is an original birth certificate.

- . Evidence of civil service employment by the U.S. government. The document must show employment by the U.S. government prior to June 1, 1976.
- . Official Military record of service. The document must show a U.S. place of birth (a DD-214 or similar official document showing a U.S. place of birth).
- . A verification with the Department of Homeland Security's Systematic Alien Verification for Entitlements (SAVE) database.
- . Evidence of meeting the automatic criteria for U.S. citizenship outlined in the Child Citizenship Act of 2000.

The Child Citizenship Act of 2000 allows certain foreign-born, biological and adopted children of American citizens to acquire American citizenship at birth, but they are granted citizenship when they enter the United States as Lawful Permanent Residents (LPRs).

The child must meet **all** of the following requirements:

- . Have at least one American citizen parent by birth or naturalization.
- . Be under 18 years of age.
- . Live in the legal and physical custody of the American citizen parent.
- . Be admitted as an immigrant for lawful permanent residence.

Third Level Evidence

Third level evidence of U.S. citizenship is documentary evidence that is used when neither primary nor secondary evidence is available. Third level evidence may be used **only** when primary evidence cannot be obtained within a reasonable length of time, secondary evidence does not exist or cannot be obtained, **and** the applicant or recipient alleges being born in the U.S. Third level evidence is usually a non-government document established for a

reason other than to establish U.S. citizenship and showing a U.S. place of birth. The place of birth on the non-government document and the application must agree.

Third level evidence is:

- An extract of a hospital record on hospital letterhead, established at the time of birth and was created at least five (5) years before the initial application date (or near the time of birth of children) and indicates a U.S. place of birth. Do not accept a souvenir “birth certificate.”
- Life, health, or other insurance record showing a U.S. place of birth and was created at least five (5) years before the initial application date.
- Religious record recorded in the U.S. within 3 months of birth showing the birth occurred in the U.S. and showing either the date of the birth or the individual’s age at the time the record was made. The record must be an official record recorded with the religious organization. Entries in a family bible are not considered religious records.
- Early school record showing a U.S. place of birth. The school record must show the name of the child, the date of admission to the school, the date of birth, a U.S. place of birth, and the name(s) and place(s) of birth of the applicant’s parents. PEM, Item 225, p. 19.

Fourth Level Evidence

Fourth level evidence should **only** be used in the rarest of circumstances and includes:

- Federal or State census record showing U.S. citizenship or a U.S. place of birth, generally for persons born 1900 through 1950. The census record must show the person’s age. To secure this information the applicant, recipient, or state should complete a form BC-600, Application for Search of Census Records for Proof of Age. Add in the remarks section, “U.S. citizenship data requested.” Also indicate that the purpose is for Medicaid eligibility. This form requires a fee.
- Seneca Indian tribal census record.

- . Bureau of Indian Affairs tribal census records of the Navaho Indians.
- . Bureau of Indian Affairs Roll of Alaskan Natives.
- . U.S. States Vital Statistics official notification of birth, that is amended more than five (5) years after the person's birth.
- . Statement signed by the physician or midwife who was in attendance at the time of birth.
- . Institutional admission papers from a nursing facility or other institution or medical records from a hospital, doctor, or clinic that was created at least five (5) years before the initial application date and indicates a U.S. place of birth. Admission papers generally show biographical information including a place of birth. An immunization record is not considered a medical record for purposes of establishing U.S. citizenship.
- . A written affidavit, an affidavit should only be used in rare circumstances. The affidavit must be completed by the applicant or recipient and at least two additional individuals of whom one is not related to the applicant/recipient and who have personal knowledge of the event(s) establishing the person's claim of citizenship. The individual making the affidavit must be able to provide proof of his/her own citizenship and identify. The affidavit is signed under penalty of perjury by the person making the affidavit but need not be notarized. The affidavit should include information explaining why other documentary evidence establishing the applicant's claim of citizenship does not exist or cannot be obtained. PEM, Item 225, pp. 19-20.

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. PEM, Item 500, p. 1.

CHILD SUPPORT

Definitions

All Programs

Child support is the money paid by an absent parent(s) for the living expenses of his/her child(ren). Medical, dental, child care and educational expenses may also be covered.

Child support is income to the child for whom the support is paid.

Court-ordered child support may be either certified or direct. PEM, Item 500, p. 9.

UNEMPLOYMENT BENEFITS

All Programs

Unemployment benefits include:

- . Unemployment Compensation Benefits (UCB) available through the Michigan Unemployment Agency and comparable agencies in other states, and
- . Supplemental Unemployment Benefits (SUB pay) from an employer or other source.

Count the gross amount as unearned income. PEM, Item 500, p. 34.

BUDGETING INCOME

Use the following guidelines to budget income.

Child Support Income

Past 3 Months

- . Use the average of child support payments received in the past 3 calendar months unless changes are expected. Include the current month if all payments expected for the month have been received. Do **not** include amounts that are unusual and not expected to continue.

Note: The 3 month period used can begin up to 3 months before the interview date or the date the information was requested.

If payment for the past 3 months vary, discuss the payment pattern from the past with the client. Clarify whether the pattern is expected to continue, or if there are known changes. If the irregular pattern is expected to continue, then use the average of these 3 months. If there are known changes that will affect the amount of the payments for the future, then do **not** use the past 3 months to project. **Document the discussion with the client and how you decided on the amount to budget.**

One Month Projection

- . If the past 3 months' child support is not a good indicator of future payments, calculate an expected **monthly** amount for the benefit month based on available information and discussion with the client. PEM, Item 505, pp. 3-4.

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. PEM, Item 505, p. 7.

In this case, the claimant is disputing the denial of her MA application and the reduction in her FAP benefits. The claimant MA application was denied for failure to provide required verification. A verification checklist was mailed to the client on August 4, 2009. This form required the claimant to submit proof of checking or savings account, proof of US citizenship, proof of the value of any 401(k), and the last 30 days of check stubs or earning statements. These items were due to the department by August 14, 2009. The department representative looked for the claimants file at the hearing and found that the client had turned in verification of her savings and checking account and the value of her 401(k). The only item that the claimant did not provide was proof of US citizenship.

The claimant testified that she did not have a birth certificate or any of the other items listed as verification of US citizenship on the verification checklist form. The claimant testified that she called the department several times to indicate that she did not have any of these verifications and to request help in obtaining proof of US citizenship the claimant testified that she did not receive any phone calls back from the department until after her case had already been denied.

The department representative testified that the caseworkers do keep telephone logs to show if the client called on a particular day. The department representative testified that a department staff member could look through the phone logs from the caseworker from July 7, 2009 through the month of September, 2009 to determine if the claimant had called and

requested assistance regarding proof of her US citizenship. This Administrative Law Judge left the record open until January 26, 2010, to allow the department to review the telephone logs and determine if the claimant had called the worker. To date, the department has not provided any further information on the telephone log. Therefore, there is no evidence presented to dispute the claimant's testimony that she did call and request help in obtaining proof of US citizenship.

Department Policy requires the department to assist in obtaining verifications when the client calls and requests, help. BAM 130. Department policy also requires that if the client cannot provide the verification despite a reasonable effort, the department is to extend the time limit at least once. BAM 130. In this case, the claimant is credible in her testimony that she called the department and requested help in obtaining verification of her United States citizenship. The claimant had turned in every other verification requested by the department. Therefore, it is highly unlikely that the claimant would not turn in a proof of United States citizenship if she had such to turn in. Thus, it appears that the claimant was not afforded the time and assistance from the department to provide her US citizenship proof.

The claimant is also contesting the reduction of her FAP benefits. Prior to the November 1, 2009, FAP budget, the claimant was not receiving unemployment compensation. Once the department budgeted in the unemployment compensation, the claimant's unearned income went up to \$1862. This was computed by averaging the claimant's child support income for three months which resulted in a budgetable amount of \$495. The claimant's unemployment compensation was also averaged out and this resulted in a budgetable income of \$1367. Added together, these two amounts equal \$1862 of budgetable unearned income. The claimant continued to receive \$595 in rent expense and the \$550 heat and utility standard.

When determined eligibility FAP benefits, the household total income must be evaluated. All earned and unearned income of each household member must be included unless specifically

excluded. BEM 500. A standard deduction from income of \$132 is allowed. Another deduction from income is provided if monthly shelter cost are an excess of 50% of the household income after all of the other deductions have been allowed, up to a maximum of \$300 for non-senior/disabled/veteran household. BEM 500 and 554; program reference manual, table 255; 7 CFR 273.2.

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 federal regulations at 7 CFR 273.10 provide standards for the amount of house hold 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 household with household size and net income of the claimant is eligible for a FAP allotment of \$92. Thus the department properly computed the claimants monthly benefit amount of FAP benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides

1. The department improperly denied claimants MA application in August, 2009.
2. The department properly budgeted the claimants FAP benefits beginning

November, 2009.

Accordingly, the departments' decision is UPHeld in part and DENIED in part.

The department shall:

1. Initiate its verification process to allow the claimant another opportunity to submit verification needed to determine eligibility MA benefits.

2. Determine the claimants eligibility for MA benefits, based upon the further information submitted by the claimant. The determination of eligibility shall be retroactive back to the claimant's original date of applications, July 7, 2009.

SO ORDERED.

/s/

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

Date Signed: April 26, 2010

Date Mailed: May 3, 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 90 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.

SLK 

cc:

