

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: 2010-5026
Issue No: 3003
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
December 8, 2009
Ottawa 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 hearing was held on December 8, 2009. Claimant appeared and testified. The record was left open until December 11, 2009, in order to allow Claimant to submit further evidence on her deductions from income.

ISSUE

Did the Department of Human Services properly determine the amount of 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) Claimant is an ongoing recipient of Food Assistance Program (FAP) benefits.
- (2) On September 8, 2009, Claimant submitted current income information for a re-determination of her Food Assistance Program (FAP) benefits.

(3) On September 23, 2009, the Department ran a financial eligibility budget, determined Claimant was eligible for \$6 per month of Food Assistance Program (FAP) benefits, and sent Claimant a Notice of Case Action (DHS-1605).

(4) On September 29, 2009, 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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

In this case, Claimant has raised two specific issues with her income. Department policy provides the following guidance for case workers. The Department's policies are available on the internet through the Department's website.

BEM 500 INCOME

DEPARTMENT POLICY

All Programs

This item discusses income for:

- Family Independence Program (FIP).
 - Refugee Assistance Program (RAP) which, if policy differs is divided into:
 - Refugee Assistance Program Cash (RAPC).
 - Refugee Assistance Program Medical (RAPM).
 - State Disability Assistance (SDA).
 - Child Development and Care (CDC).
- Note:** Applies to all CDC income eligible groups.
- Medicaid (MA) which, if policy differs, is divided into:
 - FIP-related MA.
 - SSI-related MA.

- Specific MA categories.
- Adult Medical Program (AMP).
- TMA-Plus (TMAP).
- Food Assistance Program (FAP).

The phrase All Programs in this item means all the programs listed above.

The group composition and program budgeting items specify whose income to count. The program budgeting items also contain programspecific income deductions and disregards.

Income means benefits or payments received by an individual which is measured in money. It includes money an individual owns even if NOT paid directly such as 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.

Income remaining after applying the policy in this item is called **countable**.

Count all income that is NOT specifically excluded.

PAYMENT TO REPRESENTATIVE

All Programs

Income paid to a person acting as a representative for another person is NOT the representative's income. The income is the other person's income. Common representatives are:

- Legal guardians (see BPG Glossary).
- Court-appointed conservators.
- Minor children's parents.
- Representative payees.

The fist issue Claimant raised is with her self-employment income for delivering newspapers. Her payments from the newspaper include a "fuel motor route credit" which defers

her gasoline cost to perform the deliveries. The Department used her gross income (including the fuel credit) and then subtracted 25% as expenses. Claimant asserts the fuel credit should not be included in determining her gross self-employment income.

The Reimbursement Exclusion cited above is applicable. The fuel motor route credit meets all the requirements of the exclusion. This reimbursement does not negate self-employment expenses because Claimant still bears the expense of owning, insuring, and maintaining a vehicle to earn this self-employment income.

The second issue Claimant raised is in regard to her income from a second job as a waitress. The pay stubs Claimant submitted show tips and that tip amount was used by the Department in calculating her gross income for this work. Claimant asserts that her employer deducts from her tips: 10% for bus staff; 5% of all alcoholic beverage sales for bar staff; and credit card transaction fees for customers who pay with a credit card. Claimant asserts that those amounts not be used in determining her gross income for this work.

Claimant submitted a hand written statement from the owner of the establishment which states the 5% and 10% practice. The Department argues that Claimant's pay stubs do not show this deduction, so Department policy does not provide any guidelines or exceptions for application to Claimant's tip income.

The Department is correct on this issue. Department of Human Services policy does not contain any provision for deducting from the tips shown in Claimant's pay stub. Claimant's assertion [is not within the scope of authority delegated to this](#) Administrative Law Judge pursuant to a written directive signed by the Department of Human Services Director, which states:

Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations or overrule 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); *Auto-Owners Ins Co v Elchuk*, 103 Mich App 542, 303 NW2d 35 (1981); *Delke v Scheuren*, 185 Mich App 326, 460 NW2d 324 (1990), and *Turner v Ford Motor Company*, unpublished opinion per curium of the Court of Appeals issued March 20, 2001 (Docket No. 223082).

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department of Human Services DID NOT properly determine the amount of Claimant's Food Assistance Program (FAP) benefits. The "fuel motor route credit" contained in Claimant's pay from the Grand Rapids Press should be excluded from her income for employment there.

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

It is further ORDERED that Claimant's Food Assistance Program (FAP) benefits be recalculated excluding the "fuel motor route credit" from her income.

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

Date Signed: December 15, 2009

Date Mailed: December 21, 2009

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 [REDACTED]

cc: [REDACTED]