

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.: 2010-570

Issue No.: 3015

Case No.: [REDACTED]

Load No.: [REDACTED]

Hearing Date:

November 4, 2009

Wayne County DHS (18)

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

HEARING DECISION

This matter is before the undersigned Administrative Law Judge upon pursuant to MCL 400. 9; MCL 400.37 upon claimant's request for a hearing. After due notice a telephone hearing was held on November 4, 2009 claimant was present and testified, [REDACTED] ES and [REDACTED] [REDACTED] appeared for the department and testified.

ISSUE

Is the department correct in denying claimant's FAP application?

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 applied for FAP and SER on August 18, 2009.
- (2) Claimant's application for FAP was denied for excess income.
- (3) Claimant was \$906.50 gross income from his military retirement.
- (4) Claimant requested a hearing on September 8, 2009 contesting the denial of his FAP application.

(5) At hearing claimant abandoned his appeal for SER.

CONCLUSIONS OF LAW

The Food Assistance Program, 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”), formally known as the Family Independence Agency, administers the FAP program pursuant to MCL 400.10, *et seq* and MAC R 400.3001-3015. Departmental policies are found in the Program Administrative Manual (“PAM”), the Program Eligibility Manual (“PEM”), and the Program Reference Manual (“PRM”).

Income means benefits or payments received by an individual which is measured in money. BEM 500 page 1.

In the present case, claimant was denied FAP benefits due to excess income because the Department attributed payments that claimant’s ex-wife receives from his military retirement to the claimant as income to the claimant. Claimant’s ex-wife receives \$906.50 from claimant’s military retirement. The claimant does not make the payments out of monies he receives and since he never receives the payment it is inappropriate to count it as income for the claimant. BEM 500 page1. Claimant’s ex-wife is not his representative and the payment is not made pursuant to a garnishment or other legal obligation. Therefore, the department was incorrect in counting the income claimant’s ex-wife receives and claimant’s application should be reinstated and reprocessed using only the money he receives from his military retirement.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law decides that the department was incorrect in the closure of FAP benefits, and it is

ORDERED that the department's decision in this regard be and is hereby REVERSED and claimant's application shall be reinstated and reprocessed back to the date of application August 18, 2009 and no monies received by claimant's ex-wife shall be counted as income for the claimant.



Aaron McClintic
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 11/23/09

Date Mailed: 11/23/09

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.

AM/jlg

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