

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: 2010-659
Issue No: 3003
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 29, 2009
Kent County DHS

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 October 29, 2009. Claimant was present and testified. James Geisen, FIM, appeared on behalf of the department.

ISSUE

Did the Department of Human Services (department) properly determine claimant's Food Assistance Program (FAP) allotment?

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 was an ongoing recipient of FAP benefits in a household of two persons.
- (2) Claimant had obligations for shelter and utility expenses.
- (3) Claimant's FAP benefits closed in August 2009 because she did not complete the yearly re-determination.

- (4) Claimant testified she never received the re-determination paperwork.
- (5) Claimant's household underwent several changes, including a recent move, the oldest daughter moving out of the household, and changes in child support income.
- (6) On September 8, 2009, claimant reapplied for FAP benefits.
- (7) All verifications were obtained and the department calculated the FAP budget for September 2009 determining that claimant is entitled to \$53 in FAP benefits per month.
- (8) Claimant verbally requested a hearing to contest the FAP allotment on September 28, 2009 because prior to the August 2009 closure, she was receiving \$320 a month in FAP benefits.

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 Manuals.

The federal regulations define household income to include gross wages from employment and unearned income such as SSI benefits. 7 CFR 273.9(b). Only 80% of earned income is counted in determining FAP benefits. PEM 550. Stable income received two weeks is multiplied by 2.15 to take into account fluctuations due to the number of scheduled pays in a month. PEM 505. Under 7 CFR 273.9, as amended, \$135 is deducted from the gross income of FAP recipients in determining FAP grants. Under 7 CFR 273.9, deductions for excess shelter expenses are also made. PEM 554.

To budget income from child support, PEM 505 directs the department to use the average of child support payments received in the past three calendar months, unless changes are expected. If the past three 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 505.

In the present case, the department has provided evidence of the FAP allotments claimant received. Claimant received \$ 320 in July 2009, \$320 in August 2009, \$52 in September 2009, and \$52 in October 2009. (Department Exhibit 2 pg. 2) Accordingly, there was no missed month of benefits when claimant's case closed the end of August 2009 and was reopened based on the new application in September 2009. While the monthly allotment decreased drastically in September, this would have occurred under a re-determination if it had been completed instead of the new application because claimant's circumstances had changed. The same updated information would have been used in either the re-determination or the new application. A significant decrease in benefits is not unusual when the group size is reduced due to a household member moving out.

However, the testimony at the hearing from both parties revealed inaccurate information was used in calculating claimant's September 2009 FAP budget. For example, the department did not have the correct copy of claimant's lease to properly determine shelter expenses. Therefore, the department shall obtain updated verifications and re-determine FAP eligibility retroactive to September 2009.

DECISION AND ORDER

The ALJ, based upon the findings of fact and conclusions of law, decides that the claimant was not receiving the correct monthly FAP allotment and it is ORDERED that the Department's decision in this regard be and is hereby REVERSED.

Therefore it is ORDERED that the department will obtain updated verifications and re-determine eligibility for FAP benefits retroactive to September 2009, awarding benefits to claimant, if appropriate, in accordance with this decision.

/s/ _____
Colleen Lack
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: November 6, 2009

Date Mailed: November 6, 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.

CL/cv

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