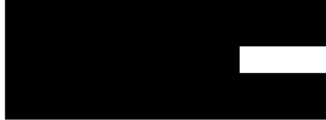


STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No.: 2011-11860
Issue No.: 3002
Case No.: [REDACTED]
Hearing Date: January 26, 2011
Wayne County DHS (35)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the claimant's request for a hearing. After due notice, a telephone hearing was held on January 26, 2011. The claimant appeared and testified. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, appeared and testified.

ISSUE

Whether DHS properly calculated Claimant's eligibility for Food Assistance Program (FAP) benefits effective 10/12/10.

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On 10/12/10, Claimant applied for FAP benefits.
2. Claimant is part of a household of five persons including Claimant and four minor children.
3. Claimant is a disabled individual.
4. Claimant received \$1853.50/month in gross Retirement, Survivors, Disability, Insurance (RSDI) income. See Exhibit 1.
5. Claimant's four children each received \$231/month in gross RSDI income. See Exhibits 2-5

6. Two of Claimant's children's RSDI is directly sent by Social Security Administration (SSA) to the children's biological mother who lives at a separate address and shares custody of the children with Claimant. See Exhibits 2 and 5.
7. Claimant pays \$110/month for his Medicare premium.
8. Claimant is responsible for an \$1886/month mortgage payment.
9. On 10/18/10, DHS calculated that Claimant is eligible for \$150/month in FAP benefits.
10. The DHS determination included the RSDI income from all four children and excluded Claimant's medical expenses.
11. On 12/16/10, Claimant requested a hearing disputing the DHS determination of FAP benefits.

CONCLUSIONS OF LAW

The Food Assistance Program (formerly known as the Food Stamp 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 (formerly known as the Family Independence Agency) administers the FAP program pursuant to Michigan Compiled Laws 400.10, *et seq.*, and Michigan Administrative Code R 400.3001-3015. DHS regulations are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT). Updates to DHS regulations are found in the Bridges Policy Bulletin (BPB).

In the present case, Claimant disputed the DHS determined amount of FAP benefits. BEM 556 outlines the proper procedures for calculating FAP benefits. The first step in calculating FAP benefits is to determine the FAP benefit group's countable monthly income.

Income means a benefit or payment 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. BEM 500 at 1.

Income paid to an individual acting as a representative for another individual is not the representative's income. *Id* at 5. The income is the other individual's income. *Id*.

It was not disputed that Claimant received \$1853.50/month in gross RSDI and that his four children receive \$231/month in RSDI. Claimant disputed the inclusion of two of his children's RSDI in the calculation of his FAP benefit budget. It was not disputed that Claimant's children's mother was a payee for two of Claimant's children's RSDI payments.

During the administrative hearing, the undersigned presumed that the children's RSDI income not received by Claimant would be excluded income. The undersigned presumed wrongly.

DHS policy clearly states that income received by a payee on behalf of another is the income for the other. DHS policy makes no exception for payees that are outside of the benefit group. Though this policy initially struck the undersigned as too unjust to be possible, a reconsideration of the policy makes it appear appropriate.

Claimant testified that he and his children's mother share equal custody of their four children. The RSDI payee status is presumably equally split between Claimant and his former spouse to represent the shared custody. DHS policies do not factor Claimant's 50% custody in determining his FAP benefits. Thus, Claimant's FAP benefits are essentially determined by a 100% custody status. Counting a child's RSDI income not received by a FAP benefit group member is reasonable as it somewhat offsets the benefits which fail to consider Claimant's shared custody status. In other words, if Claimant's FAP benefit amount does not factor Claimant's 50% custody status, then neither should the income of his children. It is found that DHS properly included the RSDI income from all four of Claimant's children as part of the FAP benefit group.

The FAP benefit group income is calculated by adding the countable monthly income for each of the individual members. For all programs, the gross amount of RSDI is countable income. BEM 503 at 20. Adding Claimant's RSDI income (\$1853 after dropping cents) with the RSDI of his children (\$231x4 children) results in a total countable income of \$2777.

Claimant's five-person FAP benefit group receives a standard deduction of \$178. RFT 255. The standard deduction is given to all FAP benefit groups; the amount of the deduction varies and is based on the group size.

DHS uses certain expenses to determine net income for FAP eligibility and benefit levels. BEM 554 at 1. For groups without a senior, disabled or disabled veteran (SDV) member, DHS considers the following expenses: child care and excess shelter (housing and utilities) up to a capped amount and court ordered child support and arrearages paid to non-household members. For groups containing SDV members, DHS also considers the medical expenses for the SDV group members. Also, there is no excess shelter cap for SDV benefit groups.

Claimant verified that he had a \$110/month (dropping cents) obligation (see Exhibit 1) for his Medicare Part B premium. DHS failed to consider this expense in determining Claimant's FAP benefits. DHS only considers the monthly medical expenses above \$35. Thus, Claimant's countable medical expenses are \$75/month.

Claimant's standard deduction, medical expenses, child support expenses and dependent care expenses are subtracted from Claimant's countable income to determine the FAP benefit group's adjusted gross income. The adjusted group income is found to be \$2524.

Claimant asserted that he had an \$1886/month mortgage obligation. Claimant submitted a closing statement (Exhibit 6) dated 12/23/05 in an attempt to verify the obligation. Claimant stated that his former spouse receives the ongoing mortgage statements and that he is unable to provide a more current or reliable verification of his mortgage.

Verification sources of each BEM item lists acceptable verifications for specific eligibility factors. BAM 130 at 4. Other, less common sources may be used if accurate and reliable. *Id.* If neither the client nor DHS can obtain verification despite a reasonable effort, DHS is to use the best available information. *Id.* at 3.

Acceptable verification sources for a mortgage are listed in BEM 554. Acceptable verifications include, but are not limited to:

- a mortgage contract or a statement from the landlord, bank or mortgage company.
- DHS-3688, Shelter Verification form; or
- Cancelled checks, receipts or money order copies, if current. The receipt must contain minimum information to identify the expense, the amount of the expense, the expense address if verifying shelter, the provider of the service and the name of the person paying the expense. BEM 554 at 11.

DHS contended that a five year old closing statement which did not list Claimant's was an invalid verification of Claimant's mortgage obligation. Though the closing statement was not an ideal verification of mortgage, based on Claimant's testimony, it would be considered the best available verification for Claimant. It is found that Claimant verified his mortgage obligation by submission of his closing statement. This finding does not prevent DHS from seeking alternative verifications (e.g. money orders) from Claimant in the future if those verifications are available to Claimant.

DHS gives a flat utility standard to all clients. BPB 2010-008. The utility standard of \$588 (see RFT 255) encompasses all utilities (water, gas, electric, telephone) and is unchanged even if a client's monthly utility expenses exceed the \$588 amount. The total shelter obligation is calculated by adding Claimant's housing expenses (\$1886) to the utility expenses (\$588); this amount is found to be \$2474.

DHS only credits FAP benefit groups with what DHS calls an "excess shelter" expense. This expense is calculated by taking Claimant's total shelter expenses (\$2474) and subtracting half of Claimant's adjusted gross income. Claimant's excess shelter amount is found to be \$1212.

As previously stated, because Claimant is a disabled individual and there is no cap to the excess shelter amount. Based on the documents submitted by DHS, it is probable that DHS failed to code Claimant as a disabled individual because Claimant's excess shelter expense was capped at \$458 (see RFT 255 at 1).

Claimant's net income is determined by taking Claimant's adjusted gross income (\$2524) and subtracting the excess shelter expense (\$1212). Claimant's net income is found to be \$1312. A chart listed in RFT 260 is used to determine the proper FAP benefit issuance. Based on Claimant's group size and net income, Claimant's FAP benefit amount is found to be \$399, an amount considerably higher than calculated by DHS. It is found that DHS improperly calculated Claimant's FAP benefits beginning with the application month of 10/2010.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly included Claimant's children's RSDI income in determining Claimant's eligibility for FAP benefits. The actions taken by DHS are PARTIALLY AFFIRMED.

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS neglected to consider Claimant's medical expenses and also improperly threatened to remove Claimant's mortgage obligations. It is ordered that DHS not remove Claimant's mortgage obligation and to redetermine Claimant's eligibility for FAP benefits effective 10/2010 by including Claimant's Medicare expenses. DHS shall also note Claimant as a disabled individual and supplement Claimant for any FAP benefits that Claimant failed to receive due to the DHS errors.

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The actions taken by DHS are PARTIALLY REVERSED.

Christian Gardocki

Christian Gardocki
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: 1/31/2011

Date Mailed: 1/31/2011

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.

CG/jlg

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