

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2011-1331
Issue No: 2014, 3015
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 10, 2010
Kent County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

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 November 10, 2010. Claimant personally appeared and testified. Claimant was represented at the hearing by [REDACTED]

ISSUES

- (1) Did the Department of Human Services (the department) properly deny claimant's Medical Assistance (MA-P) benefits based upon its' determination that claimant had excess income and a deductible spend-down?
- (2) Did the Department of Human Services (the department) properly deny claimant's Food Assistance Program benefits based upon its' determination that claimant had excess income?

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 a Food Assistance Program and Medical Assistance benefit recipient.
- (2) A redetermination was due June 1, 2010.
- (3) On June 16, 2010, the department caseworker requested current check stubs for claimant's husband and sent claimant a 3503-verification checklist to provide the verification information.

- (4) On June 12, 2010, the department caseworker contacted the claimant and advised the claimant that the check stubs must be current.
- (5) On July 19, 2010, the department caseworker received the check stubs with a gross income of \$ [REDACTED] at which time the department caseworker entered the budget.
- (6) The department caseworker determined that the claimant was over income for Food Assistance Program benefits and a Medical Assistance was denied and a deductible spend-down amount was increased.
- (7) On July 22, 2010, the department caseworker sent claimant notice of the negative action.
- (8) On July 28, 2010, the claimant filed a request for a hearing to contest the department's negative action.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Michigan provides MA eligible clients under two general classifications: Group 1 and Group 2 MA. Claimant qualified under the Group 2 classification which consists of clients whose eligibility results from the state designating certain types of individuals as medically needy. PEM, Item 105. In order to qualify for Group 2 MA, a medically needy client must have income that is equal to or less than the basic protected monthly income level.

Department policy sets forth a method for determining the basis maintenance level by considering:

1. The protected income level,
2. The amount diverted to dependents,
3. Health insurance and premiums, and
4. Remedial services if determining the eligibility for claimants in adult care homes.

If the claimant's income exceeds the protected income level, the excess income must be used to pay medical expenses before Group 2 MA coverage can begin. This process is known as a spend-down. The policy requires the department to count and budget all income received that is not specifically excluded. There are three main types of income: countable earned, countable unearned, and excluded. 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 is any income that is not earned. The amount of income counted may be more than the amount a person actually receives, because it is the amount before deductions are taken, including the deductions for taxes and garnishments. The amount before any deductions are taken is called the gross amount. PEM, Item 500, p. 1.

In the instant case, the department calculated claimant's income based upon receipt of \$3443 per month in gross income.

After giving claimant the appropriate earned and unearned expense deductions, the department determined that claimant was receiving \$2476 per month in net monthly income. The Administrative Law Judge has reviewed the record and the exhibits and finds that the fiscal group's net income after being provided with the most beneficial earned and unearned income deductions is \$2476 per month. Federal regulations at 42 CFR 435.831 provide standards for the determination of the MA monthly protected income levels. The department is in compliance with the Program Reference Manual, Tables, Charts, and Schedules, Table 240-1. Table 240-1 indicates that the claimant's monthly protected income level for claimant's fiscal group of two people is \$516. \$2476 per month in net income minus the total needs of \$516 equals excess income in the amount of \$1960. The department's determination that claimant has excess income for purposes of Medical Assistance eligibility is correct.

Deductible spend-down is a process which allows the customer with excess income to become eligible for Group 2 MA if sufficient allowable medical expenses are incurred. PEM, Item 545, p. 1. Meeting the spend-down means reporting and verifying allowable medical expenses that equal or exceed the spend-down amount for the calendar month tested. PEM, Item 545, p. 9. The group must report expenses by the last day of the third month following the month it wants MA coverage for. PEM, Item 130 explains verification and timeliness standards. PEM, Item 545, p. 9.

The department's determination that claimant had a spend-down in the amount of \$1960 per month is correct based upon the information contained in the file.

Claimant's allegation that the spend-down is too expensive and unfair because of his other expenses is a compelling, equitable argument to be excused from the department's program policy requirement.

The claimant's grievance centers on dissatisfaction with the department's current policy. The claimant's request 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).

The Administrative Law Judge has no equity powers. Therefore, the Administrative Law Judge finds that the department has established by the necessary, competent, material, and substantial evidence on the record that it was acting in compliance with department policy when it determined that claimant had excess income for purposes of Medical Assistance benefit eligibility and when it determined that claimant had a monthly deductible spend-down in the amount of \$1960.

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 (BAM), the Program Eligibility Manual (BEM) and the Program Reference Manual (PRM).

For purposes of Food Assistance Program benefits the department caseworker is charged with counting all of claimant's countable income. The group composition and program budgeting items specify whose income to count. The program budgeting items might also contain program specific income deductions and disregards. Income means benefits or payments measured in money. It includes money a person owes even if it is not paid directly such as stock dividends that are automatically reinvested and income paid to a representative. 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 are taken is called the gross amount, BEM, Item 500, p. 1).

Income remaining after applying the policy in this item is called countable. Count all income that is not specifically excluded. BEM, Item 500, p. 1.

In the instant case, the Food Assistance Program budget counted claimant's gross earned income of \$ [REDACTED] per month. The gross income limit from the Food Assistance Program Reference Manuals, Tables, Charts and Schedules indicates that gross

income for a fiscal group of two persons is \$ [REDACTED] Claimant's income is in excess of \$ [REDACTED] and fails the gross income test.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department of Human Services properly determined that claimant was ineligible to receive Food Assistance Program benefits and Medical Assistance benefits based upon its' determination that claimant had excess income. The department also properly determined that claimant had a deductible spend-down in the amount of \$ [REDACTED]

Accordingly, the department's decision is AFFIRMED.

Landis _____
/s/ Y. Lain
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: December 7, 2010

Date Mailed: December 7, 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 mailing 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.

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