

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg No: 2011 31862
Issue No: 3015
Case No: [REDACTED]
Hearing Date:
May 31, 2011
Oakland County DHS (02)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 May 31, 2011. The Claimant did not appear. [REDACTED], [REDACTED], the Claimant's attorney, appeared. [REDACTED] appeared as a witness on behalf of the Claimant. Karen Smalls, FIM and Alison Yager, Assistance Payments Worker appeared and testified on behalf of the Department.

ISSUE

Whether the Department correctly denied the Claimant's application for Food Assistance (FAP) benefits when it included, as income, the Claimant's Veteran's Administration Aid and Attendance and Housebound Allowance.

FINDINGS OF FACT

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

- (1) The Claimant applied for FAP benefits on February 15, 2011.

- (2) The Claimant's application was denied by Notice of Case Action dated February 17, 2011. The reason for the application denial was that the Claimant's net income exceeded the net income limit.
- (3) The Claimant receives \$848 in Social Security, \$231.95 in pension income.
- (4) The Claimant also receives \$1001 from the VA which is an aid and attendance allowance. The Claimant is homebound.
- (5) The Claimant's application indicated that the \$1001 is received from the Veteran's Administration and is an aid and attendance allowance.
- (6) The Claimant's attorney and authorized hearing representative requested a hearing on May 4, 2011, protesting the denial of the Claimant's FAP application.

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 Bridges Reference Manual (BRM).

When determining eligibility for FAP benefits, the household's total income must be evaluated. All earned and unearned income of each household member must be included unless specifically excluded. BEM 500.

In this case, the Administrative Law Judge has reviewed the FAP determination made by the Department, and the Notice of Case Action which closed the case due to the claimant's net income exceeding the net income limit. In making its determination, the Department included as unearned income \$1001 in Veterans Administration aid and attendance allowance. BEM 503 requires that this income not be included as income when calculating FAP benefits.

BEM 503, page 26 and 27 provides:

VA Aid and Attendance and Housebound Allowances

All Types of Assistance

Payments are made to veterans, spouses of disabled veterans, and surviving spouses who are:

- Housebound.
- In regular need of the aid and attendance of another individual.
- The payment is included with the pension or compensation payment.

Bridges excludes as income and as an asset the portion of a VA pension or compensation that is the aid and attendance or housebound allowance.

Based upon the foregoing provision it must be found that the Department improperly included, as income, the aid and attendance allowance as unearned income. There was sufficient information provided with the Claimant's application that the Department should not have included this amount when calculating the FAP budget to determine eligibility. The Department's determination which included this income is clear error and the Department determination is incorrect and is reversed.

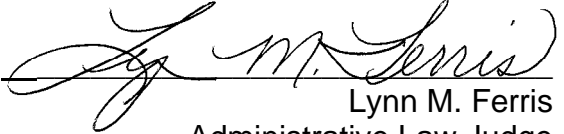
DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, determines that the Department's decision to deny the Claimant's FAP application was incorrect and its determination regarding the Claimant's gross unearned income amount is not supported by the record presented.

Accordingly, the Department's decision is REVERSED.

The Department is ORDERED to reopen and reprocess the Claimant's FAP application retroactive to February 15, 2011, and to determine the Claimant's eligibility for FAP benefits in accordance with this decision.

If after recalculating the Claimant's FAP benefits the Department determines the Claimant is eligible for FAP, it shall issue a FAP supplement to the Claimant for benefits the claimant is otherwise entitled to receive, in accordance with policies found in the Bridges Administrative and Eligibility Manuals.


Lynn M. Ferris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 06/01/11

Date Mailed: 06/02/11

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.

LMF/dj

cc:

