

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.: 2011-3840  
Issue No.: 3026  
Case No.: [REDACTED]  
Hearing Date: February 7, 2011  
DHS County: Wayne (82-17)

**ADMINISTRATIVE LAW JUDGE:** Jan Leventer

**HEARING DECISION**

This matter is before the undersigned Administrative Law Judge pursuant to Michigan Compiled Laws (MCL) 400.9 and 400.37 and Claimant [REDACTED] request for a hearing. After due notice, a telephone hearing was held on December 1, 2010. Claimant appeared and testified. [REDACTED] appeared as the interpreter for Claimant. [REDACTED], and [REDACTED], appeared for the Department of Human Services (DHS).

At the December 1, 2010, hearing, the Administrative Law Judge *sua sponte* continued the case for the reason that the interpreter's skills were not sufficiently advanced to be of assistance in interpreting the testimony. After due notice, the hearing was continued in person on February 7, 2011. Claimant appeared and testified. [REDACTED], and [REDACTED], appeared and testified for DHS.

**ISSUE**

Whether Claimant's Food Assistance Program (FAP) benefits were properly calculated?

**FINDINGS OF FACT**

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

1. On August 1, 2009, DHS granted FAP benefits of \$931 per month to Claimant.
2. On October 4, 2010, DHS conducted a Redetermination application process in order to update Claimant's income and expense information.

3. Claimant submitted her 2009 IRS tax returns and her husband's receipts for expenses incurred as a self-employed carpenter.
4. On Claimant's tax return, the gross income is \$35,000 and the net income is \$17,000.
5. Claimant's expense receipts total \$37,000-\$39,000.
6. On or before October 22, 2010, DHS informed Claimant that based on the information she provided to DHS, her FAP benefits would decrease to \$625 on November 1, 2010.
7. On October 22, 2010, Claimant filed a hearing request with DHS.

### **CONCLUSIONS OF LAW**

FAP was established by the U.S. Food Stamp Act of 1977 and is implemented by federal regulations in Title 7 of the Code of Federal Regulations. DHS administers the FAP program pursuant to MCL 400.10, *et seq.*, and Michigan Administrative Code Rules 400.3001-400.3015. DHS policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Tables (RFT). These manuals are available online at [www.michigan.gov/dhs-manuals](http://www.michigan.gov/dhs-manuals).

The administrative manuals are the policies and procedures DHS officially created for its own use. While the manuals are not laws created by the U.S. Congress or the Michigan Legislature, they constitute legal authority which DHS must follow. It is to the manuals that I look now in order to see what policy applies in this case. After setting forth what the applicable policies are, I will examine whether they were in fact followed in this case.

DHS cites BEM 502, "Income from Self-Employment," as its legal basis for decreasing Claimant's FAP benefits. I agree with DHS that BEM 502 is the correct legal authority for DHS' action in this case. I will use BEM 502 to analyze this case and decide if DHS' action was correct.

DHS' action, using BEM 502, allows for consideration of the expenses that the individual incurred in producing self-employment income. BEM 502 provides a formula for calculating what amount the gross income from self-employment shall be and what expenses are to be deducted. The BEM 502 formula for a client's gross countable self-employment income is on page 3 of the Item and is three paragraphs long. BEM 502, p 3.

The first two paragraphs of BEM 502 discuss what to do when a client has more expenses producing the income than they actually earned as income and they also have other sources of income as well. In this situation, the DHS Specialist is directed not to use the amount of expenses which are more than the amount of the self-employment income as an offset to reduce the amount of any other income from other sources. *Id.*

BEM 502 includes this example of how to apply the no-offset rule:

Example: An individual operates a retail store. Total proceeds for the month are \$3,200. Allowable expenses total \$3,800. **The \$600 deficit cannot be used to offset any other income.** *Id.* (emphasis added).

I understand this example to mean that if the individual in the example has, in addition to the store, a part-time or full-time job elsewhere where they earn wages, or the individual has income from savings and investments, she or he cannot reduce the amount of the other countable income by carrying the \$600 over and deducting it from the other income. *Id.*

Other income is not present in this case, and this is not a disputed fact. As Claimant has no other income, there is no way that she could use excess expenses to offset such income. I find and determine, therefore, that the offset provision of BEM 502, paragraphs 1 and 2, does not apply to the facts of this case. *Id.*

This case, however, does fall within the rule in the third paragraph of BEM 502, which is as follows:

Allowable expenses are the higher of 25 percent of the total proceeds, or **actual expenses if the client chooses to claim and verify the expenses.** BEM 502, p. 3 (emphasis added).

I apply this formula to the case before me as follows. Using \$35,000 gross income from the Claimant's tax return, I determine that 25% of the gross income of \$35,000 equals \$8,750. Next, I compare this number, \$8,750, to the actual expenses Claimant submitted, which are \$37,000-\$39,000. Clearly, Claimant's actual expenses are higher than the 25% figure of \$8,750.

Accordingly, as Claimant's actual expenses are documented and are higher than 25% of the total proceeds, I find and conclude that Claimant is entitled to the higher of the two, which is \$37,000-\$39,000 pursuant to BEM 502. I determine, therefore, that Claimant's countable self-employment income is \$0.00 (zero dollars), and Claimant's FAP benefits should be recalculated using \$0.00 as her countable self-employment income. *Id.*

In conclusion, DHS committed an error in this case and is REVERSED. DHS shall reopen and reprocess Claimant's FAP benefits, recalculate her FAP benefits, and provide any appropriate retroactive supplemental FAP benefits to Claimant for 2009 and 2010. Such steps shall be taken in accordance with DHS policies and procedures.

**DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that a DHS error has occurred and DHS IS REVERSED. IT IS HEREBY ORDERED that DHS shall reopen and reprocess Claimant's FAP benefits from August 1, 2009, to the present and adjust and supplement Claimant's benefits retroactively as appropriate in accordance with DHS policies and procedures.



Jan Leventer  
Administrative Law Judge  
for Maura Corrigan, Director  
Department of Human Services

Date Signed: February 9, 2011

Date Mailed: February 14, 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.

JL/pf

cc:

