

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-44859
Issue No.: 3003
Case No.: [REDACTED]
Hearing Date: August 22, 2011
DHS County: Wayne (82-19)

ADMINISTRATIVE LAW JUDGE: Jan Leventer

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to Michigan Compiled Laws (MCL) Sections 400.9 and 400.37, which govern the administrative hearing and appeal process, and Claimant's request for a hearing. After due notice, a telephone hearing was held in Detroit, MI, on August 22, 2011. Claimant appeared and testified.

[REDACTED], appeared and testified on behalf of the Department of Human Services (DHS).

ISSUE

Whether DHS calculated Claimant's Food Assistance Program (FAP) benefit allotment in accordance with DHS policy and procedure?

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. In 2011, DHS provided FAP benefits to Claimant.
2. From May 16-29, 2011, Claimant's husband worked eight hours of overtime.
3. From May 30-June 12, 2011, Claimant's husband worked one hour of overtime.
4. From June 13-26, 2011, Claimant's husband did not work any overtime hours.
5. On July 20, 2011, DHS issued a Notice of Case Action reducing Claimant's FAP grant from \$305 to \$239.

6. On July 26, 2011, Claimant filed a Request for a Hearing with DHS.

CONCLUSIONS OF LAW

FAP was established by the United States Food Stamp Act of 1977 and is implemented by Federal regulations contained in Title 7 of the Code of Federal Regulations. DHS administers FAP pursuant to MCL 400.10 *et seq.* and Michigan Administrative Code Rules 400.3001-3015. DHS' policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables (RFT). These manuals are available online at www.michigan.gov/dhs-manuals.

The DHS manuals contain the policies and procedures DHS officially created for its own use. While the DHS policies and procedures are not laws created by the U.S. Congress or the Michigan Legislature, they constitute legal authority which DHS must follow. The manuals must be consulted in order to see what policies apply in this case. After setting forth what the applicable policies are, an analysis as to how they apply to the facts of this case will be presented.

"Income" is defined in BEM 500 as follows:

Income means a benefit or payment received by an individual which is measured in money....Gross income is the amount of income before any deductions such as taxes or garnishments. This may be more than the actual amount an individual receives.... Count all income that is **not** specifically excluded. BEM 500, p. 3 of 12 (bold print in original).

In this case, Claimant is disputing the computation of her FAP allotment, for the reason that DHS included her husband's overtime income along with regular income, even though his overtime was irregular. BEM 505, "Prospective Budgeting/Income Change Processing," requires DHS to convert available income into a standard, nonfluctuating monthly amount of countable income. BEM 505 explains that this is required when a customer has "stable and fluctuating income that is received more often than monthly." BEM 505, pp. 1, 6.

However, based on the record in this case, the evidence establishes that DHS erred in including overtime as part of Claimant's income. DHS states in its Hearing Summary that "Client's husband had overtime in two consecutive checks for June." However, the evidence in the record is that he had one hour of overtime in the first two weeks of June and none in the second two weeks of June. To the extent that DHS projected the eight overtime hours worked in May, forward into June and also July, DHS erred in the calculation of Claimant's FAP benefits.

In conclusion, based on the findings of fact and conclusions of law above, DHS is REVERSED in this case and shall be required to recalculate Claimant's FAP as of August 1, 2011.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, determines that DHS is REVERSED. IT IS HEREBY ORDERED that the Department shall:

1. Initiate procedures to recalculate and correct Claimant's FAP effective August 1, 2011, using complete income data available;
2. Initiate procedures to provide supplemental retroactive benefits to Claimant to restore her to the FAP benefit level to which she is entitled.

All steps shall be taken in accordance with DHS policies and procedures.



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

Date Signed: August 23, 2011

Date Mailed: August 23, 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.

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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:

