

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. 201117215
Issue No. 3015
Case No. [REDACTED]
Hearing Date: March 2, 2011
District: SSPC East (98)

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 March 2, 2011. The claimant appeared and testified. On behalf of Department of Human Services (DHS), [REDACTED], and [REDACTED] appeared and testified.

ISSUE

Whether DHS properly denied Claimant's application dated 12/3/10 for Food Assistance Program (FAP) benefits due to excess income.

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 12/3/10, Claimant applied for FAP benefits.
2. Claimant is part of a group size of five persons.
3. No member of Claimant's FAP benefit group is a senior (over 60 years of age), disabled or a disabled veteran.
4. On an unspecified date, Claimant verified receiving the following employment "total earnings" on the following dates : \$1448.87 on 11/4/10 (see Exhibit 2) and \$2865 on 11/18/10 (see Exhibit 3).

5. Claimant's "total earnings" are reduced by 401k loans, repayment of a forgivable loan and repayment of a draw in his employment.
6. Based on the amount of Claimant's total earnings, DHS determined that Claimant had excess income for FAP benefits and denied Claimant's application dated 12/3/10
7. On 1/12/11, Claimant requested a hearing disputing the denial 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 (RTM). Updates to DHS regulations are found in the Bridges Policy Bulletin (BPB).

In the present case, Claimant disputed the denial of his application dated 12/3/10 due to excess income. BEM 556 outlines the proper procedures for calculating FAP benefits.

The first step in the process is to calculate the FAP benefit group's gross monthly income so a gross income test can be performed. The gross income test is only applicable for groups without a senior, disabled or disabled veteran (SDV) member. BEM 556 at 3. Claimant's FAP benefits group is not an SDV group; thus, the gross income test must be performed. Claimant specifically disputed how DHS prospectively his gross employment income in calculating his FAP benefits.

For non-child support income, DHS is to use past income to prospect income for the future unless changes are expected. BEM 505 at 4. Specifically, DHS is directed to use income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month. *Id.* The 30-day period used can begin up to 30 days before the interview date or the date the information was requested. *Id.* A pay from the past 30 days may be discarded if it is unusual and does not reflect the normal, expected pay amounts. *Id.* DHS may also use income from the past 60 or 90 days for fluctuating or irregular income, if the past 30 days is not a good indicator of future income, and the fluctuations of income during the past 60 or 90 days appear to accurately reflect the income that is expected to be received in the benefit month. *Id.* at 5.

Claimant contended that DHS should have used his year to date income as the basis to prospect employment income. Claimant contended that his year-to-date income is the most accurate reflection of what he makes from his employment. Claimant's contention is reasonable but simply not supported by DHS regulations. DHS policy reasonably

relies on recent employment income accurately predicting income better than a longer period of earnings. DHS policy reasonably relies on recent earning being better predictors of income than months old income. The undersigned cannot alter DHS regulations even if Claimant's employment circumstances may be the rare exception when year-to-date income is the best gauge of future income. It is found that DHS properly rejected Claimant's year-to-date average as a method to prospect Claimant's income.

Claimant testified that his gross income is reduced by unspecified repayment amounts of a 401k and forgivable loan. As stated above, DHS is to use gross income, not net income to determine Claimant's FAP benefit eligibility. Gross income includes amounts withheld from income which are any of the following: voluntary, to repay a debt and to meet a legal obligation. BEM 500 at 3. It is found that DHS properly did not factor Claimant's loan repayments into Claimant's gross income payments.

Claimant also stated that he receives a base salary for his employment; his base salary is based on expected commissions he makes as a financial advisor. DHS used Claimant's "total earnings" from his 11/4/10 and 11/18/10 pays to prospect Claimant's gross income. The issue to determine is whether DHS properly used Claimant's "total earnings" as the basis for Claimant's gross employment income.

The undersigned failed to find guidelines within DHS policy in how employment draws should affect a client's gross income. If Claimant's "total earnings" from 11/4/10 and 11/18/10 included commissions that Claimant did not receive because he was mandated to repay his employer for base pay that he received earlier in the year, then the undersigned would be inclined to find error in the DHS determination. In such a circumstance, DHS would be double budgeting any income in the "total earnings"; the income would be counted once as base pay and a second time as a commission used to pay back the already received base pay. In Claimant's circumstances, DHS correctly determined Claimant's gross income.

The YTD "total earnings" were listed on each of Claimant's pay documents. Looking at the documents from 10/21/10, 11/4/10 and 11/18/10, the undersigned could determine Claimant's true gross earnings for each pay by subtracting the YTD earnings on the previous pay date from the YTD earnings on the current pay date. It was determined that the "total earnings" deducted from the YTD earnings matched the "total earnings" listed for each pay date. The method utilized by the undersigned confirms that Claimant's pay date "total earnings" is an accurate representation of Claimant's income because Claimant conceded that the YTD "total earnings" was an accurate representation of his income. It is found that DHS properly determined Claimant's gross earnings for 11/4/10 as \$1448.87 and for 11/18/10 as \$2865.


DHS is to convert biweekly non-child support income into a 30 day period by multiplying the average biweekly income by 2.15. BEM 505 at 6. Multiplying Claimant's average gross employment income by 2.15 results in a monthly gross income of \$4637.

If the group's monthly gross income exceeds the monthly gross income limits then the group is automatically denied FAP eligibility. BEM 556 at 3. The gross income test only considers gross income; thus, child support payments, rent, mortgage, utilities and other expenses are not a factor in the gross income test outcome.

The gross income limit for a group of five persons is \$2794. RFT 250 at 1. The FAP benefit group's gross income exceeded the gross income limits which properly resulted in denial of FAP benefits based on income-eligibility. It is found that DHS properly denied Claimant's application for FAP benefits due to excess income.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly denied Claimant's application dated 12/3/10 for FAP benefits due to excess income. The actions taken by DHS are AFFIRMED.


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

Date Signed: 03/14/11

Date Mailed: 03/17/11

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 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.

CG/dj

cc:

