

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.: 2011-19870
Issue No.: 3002
Case No.: [REDACTED]
Hearing Date: March 22, 2011
DHS County: Macomb (50-20)

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 March 22, 2011. Claimant appeared and testified at the hearing. [REDACTED], appeared and testified on behalf of the Department of Human Services (DHS).

ISSUE

Whether Claimant's Food Assistance Program (FAP) benefits are in accordance with DHS policies and procedures?

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 November 1, 2009, Claimant began receiving Retirement, Survivors and Disability Insurance (RSDI) disability benefits from the U.S. Social Security Administration.
2. On or about April 9, 2010, Claimant began receiving FAP benefits from DHS.
3. On December 1, 2010, Claimant's RSDI increased from \$1,627 to \$1,643 per month.
4. Effective December 1, 2010, DHS reduced Claimant's FAP benefits from \$200 to \$16 per month.

5. DHS calculated Claimant's FAP benefits in accordance with DHS policy and procedure.
6. On February 11, 2011, Claimant filed a notice of 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 contained 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 Reference Tables (RFT). These manuals are available online at www.michigan.gov/dhs-manuals.

The administrative manuals are the policies and procedures DHS officially created for its own use. While the DHS 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 policy is, I will examine whether it was in fact followed in this case.

The DHS authorities for its action in this case are BEM 503, "Income, Unearned," BEM 550, "FAP Income Budgeting," BEM 554, "FAP Allowable Expenses and Expense Budgeting," and BEM 556, "Computing the Food Assistance Budget." I find that these items provide procedures for DHS calculations and that, in this case, the procedures have been followed.

Also, BEM 500, "Income Overview," sets out the policies and procedures for determining a claimant's countable income for several DHS programs, including FAP. Unearned income is counted as income in DHS' calculations for FAP. BEM 500, p. 1.

Unearned income is described in BEM 500 as "all income that is not earned." Unearned income is discussed in detail in BEM Item 503, "Income, Unearned." BEM 503 identifies fifty-one types of unearned income. It defines each type and indicates for each type of unearned income whether it is included as countable income for the different types of assistance. *Id.*, p. 3; BEM 503, p. 1.

The categories of unearned income are: accelerated life insurance payments, adoption subsidies, Agent Orange payments, alien sponsor income, American Indian payments, annuity income, black lung, child/community spouse allocation, child foster care payments, child support, death benefits, donations/contributions, educational assistance (not work study), factor concentrate litigation settlement (*Walker vs Bayer*), Filipino

Veterans Equity Compensation Fund, flexible benefits, foster grandparents, government aid (including Medicaid), home equity conversion plans, individual development accounts, insurance payments for medical expenses, interest and dividends directly to client, Japanese and Aleut payments, jury duty, lease of natural resources, loan proceeds, Michigan Rehabilitation Services payments, military allotments, Nazi Victims Compensation, Older American Volunteer Program, radiation exposure compensation, Railroad Retirement Board benefits, Retired Senior Volunteer Program (RSVP), retirement income-other, **Retirement, Survivors and Disability Insurance (RSDI) (Social Security benefits)**, Ricky Ray Hemophilia Relief Act, sale of property in installments, SCORE or ACE, sick and accident insurance payments, spousal support, strike benefits, Supplemental Security Income (SSI), tax refunds and tax credits, trust payments, unemployment benefits, urban crime prevention, U.S. Civil Service and Federal Employee Retirement System, veterans benefits, VA pension and compensation, workers compensation, and Youthbuild. *Id.*, pp. 2-28. (Emphasis added.)

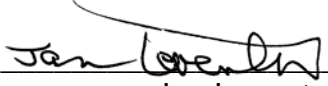
At the Administrative Hearing, Claimant testified, "I have nothing left over for me to eat. I don't agree with the reduction."

I have reviewed all of the evidence and testimony in this case. I determine and conclude that DHS acted correctly in including Claimant's RSDI income in its calculations and by including the allowable deductions. I find and conclude that DHS acted in accordance with its policies and procedures in this case. I AFFIRM DHS' action.

In conclusion, based on all of the findings of fact and conclusions of law, I find and conclude that DHS is AFFIRMED in this case. DHS need take no further action in this case.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, states IT IS ORDERED that DHS is AFFIRMED. DHS need take no further action in this matter.



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

Date Signed: March 30, 2011

2011-19870/JL

Date Mailed: April 4, 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:

