

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201139252
Issue No.: 3003
Case No.: [REDACTED]
Hearing Date: July 20, 2011
Macomb County DHS (12)

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 July 20, 2011 from Detroit, Michigan. The Claimant appeared and testified. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, appeared and testified.

ISSUE

Whether DHS properly budgeted Claimant's mortgage obligation as \$0 based on Claimant's alleged failure to verify her mortgage obligation during a period she was seeking a loan modification.

FINDINGS OF FACT

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

1. Claimant was an ongoing FAP benefit recipient.
2. Claimant had an ongoing mortgage obligation.
3. On an unspecified date, Claimant's mortgage company required Claimant to make a monthly mortgage payment that included an escrow payment for Claimant's property insurance and taxes.
4. On an unspecified date, Claimant called her mortgage company to have her mortgage obligation modified.

5. Claimant was advised by her mortgage company that any mortgage payments would be refused by the mortgage company during the period of her mortgage modification evaluation.
6. On 5/31/11, Claimant was interviewed by DHS concerning 6/2011 FAP benefit eligibility and Claimant advised DHS of her loan modification.
7. Effective 6/2011, DHS removed the mortgage obligation from Claimant's FAP benefit determination.
8. On 6/6/11, Claimant disputed the DHS removal of her mortgage obligation in determining Claimant's FAP benefit eligibility.

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). DHS administers the FAP 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 (RFT). Updates to DHS regulations are found in the Bridges Policy Bulletin (BPB).

The undersigned will refer to the DHS regulations in effect as of 5/2011, the month of the DHS decision which Claimant is disputing. Current DHS manuals may be found online at the following URL: <http://www.mfia.state.mi.us/olmweb/ex/html/>.

In the present case, there was no dispute that Claimant had an obligation to pay two mortgages. According to Claimant's testimony, in early 2011, one of Claimant's mortgage companies mandated an escrow account for Claimant thereby requiring Claimant to pay a monthly amount for her property taxes and insurance to the mortgage company. Claimant also stated that she was current on her mortgage obligation when she contacted the mortgage company about a loan modification. Claimant testified that she requested the modification because she could not afford the increased monthly payments. Claimant stated that her mortgage company would not accept payments during the period Claimant's request for loan modification was evaluated. After several months of considering Claimant's application for loan modification, the request was denied. Claimant then stated that because she had not made any payments on her mortgage, she was several months behind on her mortgage agreement and began receiving foreclosure notices. Claimant states she expected a sheriff sale on her home to occur in 9/2011.

The only issue in dispute was whether DHS should have credited Claimant with a mortgage obligation beginning 6/2011. It was not disputed that whether the obligation was budgeted would have affected Claimant's FAP benefit eligibility for 6/2011. The undersigned will first consider whether the mortgage obligation could have been budgeted.

DHS is to allow a shelter expense (which encompasses housing expenses) when the FAP group has a shelter expense or contributes to the shelter expense. BEM 554 at 10. Shelter expenses are allowed when billed. *Id.* The expenses do not have to be paid to be allowed. *Id.*

Housing expenses include rent, mortgage, a second mortgage, home equity loan, required condo or maintenance fees, lot rental or other payments including interest leading to ownership of the shelter occupied by the FAP group. BEM 554 at 10. The expense must be a continuing one. *Id.* Payments that exceed the normal monthly obligation are not deductible as a shelter expense unless the payment is necessary to prevent eviction or foreclosure, and it has not been allowed in a previous FAP budget. *Id.*

DHS stopped crediting Claimant with a housing expense in 7/2011. DHS justified the stoppage primarily based on the requirement that the expense be billed. DHS stated that Claimant was unable to obtain a mortgage statement for 7/2011 because the expense was not billed.

The DHS interpretation of what is a "billed" expense is very literal. Whether a Claimant receives an actual bill for a housing expense is immaterial to the existence of an obligation. The undersigned cannot imagine that DHS intended to make a housing obligation credit hinge on the billing preferences of the mortgage holder.

As an example, accepting the DHS interpretation of "billed" would throw into question the correctness of budgeting all rental expenses. Rental expenses are a part of shelter expenses and would be covered by the billing requirement. The undersigned is not aware of any landlord that bills tenants in the way that DHS construed "billed" in the present case. DHS wisely never attempted to argue such a preposterous interpretation of "billed" despite a debatably literal reading of DHS regulation which would justify it.

The undersigned suspects that a "billed" expense was intended to mean a due expense. The requirement would make more sense for property agreements in which there were annual (or longer) obligations in which the payments are broken into monthly payments. Thus, a \$6000 annual obligation paid in monthly installments would properly be considered as billed at \$500 on a monthly basis.

The undersigned is also not concerned that Claimant's mortgage company advised Claimant that any payments would be refused during the loan modification evaluation period. The statement by the mortgage company never ceased Claimant's ongoing obligation to make monthly mortgage payments. What would make more sense is to determine whether Claimant had an obligation or not. The undersigned is not aware of any mortgage agreements where the homeowner is not obligated for the expense until the loan is paid or the homeowner's ownership ends. It is found that DHS erred by failing to budget Claimant's mortgage obligation on the basis that the obligation was not billed.

The undersigned must also consider whether Claimant met the verification requirements to budget the mortgage expense. Concerning all FAP expenses, DHS must verify the responsibility to pay and the amount of certain expenses. BEM 554 at 2. DHS is to document verification in the case record. *Id.* DHS is to not budget expenses that require verification until the verification is provided. *Id.* DHS is to determine eligibility and the benefit level without an expense requiring verification if it cannot be verified. *Id.* For all types of assistance, if neither the client nor DHS can obtain verification despite a reasonable effort, DHS is to use the best available information. If no evidence is available, DHS is to use best judgment. BAM 130 at 3.

DHS also contended that Claimant was unable to verify her mortgage expenses and the failure to do so properly resulted in a failure to budget mortgage expenses. It is known that Claimant had a monthly mortgage obligation and that obligation never stopped. It is possible that the obligation may have been altered either by late fees, penalties or other costs imposed by the mortgagee. These costs would affect how much Claimant had to pay to stop the foreclosure but would have not affected the obligation that DHS credits in the FAP budget. Late fees and/or penalties incurred for shelter expenses are not an allowable expense. BEM 554 at 10. Thus, DHS would have no need to verify these amounts.

The undersigned finds the same to be true concerning Claimant's escrow account. Whether Claimant paid her taxes or insurance separately from her mortgage or with her mortgage, the result is the same for purposes of budgeting Claimant's housing obligation. DHS had Claimant's mortgage statements from 2011 and had no reason to require any further verification. It is found that DHS erred by not crediting Claimant's already verified housing obligation.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS improperly failed to budget Claimant's ongoing housing expenses. It is ordered that DHS:

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- (1) use Claimant's most recent mortgage statements as verification of Claimant's ongoing housing expenses in recalculating Claimant's FAP benefits beginning 7/2011;
- (2) supplement Claimant for any FAP benefits not received as a result of the DHS failure to credit Claimant for a housing expense obligation.

The actions taken by DHS are REVERSED.



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

Date Signed: July 22, 2011

Date Mailed: July 22, 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 of the rehearing decision.

CG/hw

cc:

