

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

IN THE MATTER OF:



Reg. No.: 201145444
Issue No.: 3026
Case No.: [REDACTED]
Hearing Date: August 24, 2011
Wayne County DHS (17)

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 August 24, 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 determined Claimant to be over-income for Food Assistance Program (FAP) benefits effective 7/2011.

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 was part of a household that included himself and his daughter.
3. Claimant's daughter was a full-time college student.
4. Claimant submitted verification of self employment income which showed a monthly \$1,000 salary that Claimant paid to himself.
5. Claimant verified a net profit for each of the following months for his business: \$2457.21 for 3/2011, (\$741.33) for 4/2011 and \$877.33 for 5/2011.

6. On 7/8/11, DHS determined that Claimant was ineligible for FAP benefits effective 8/2011 based on self-employment income from 3/2011-5/2011 for a FAP benefit group size of one person.
7. On 7/27/11, Claimant requested a hearing to dispute the termination 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). 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 7/2011, 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/>.

The present case involved a DHS determination of FAP benefits effective 8/2011. The first issue in dispute concerned whether Claimant's child was properly excluded by DHS due to Claimant's child's student status.

A person enrolled in a post-secondary education program may be in student status. BEM 245 at 1. A person in student status must meet certain criteria in order to be eligible for assistance. *Id.*

A person is in student status if he/she is aged 18 through 49 years and enrolled half-time or more in either:

- a vocational, trade, business, or technical school that normally requires a high school diploma or an equivalency certificate; or
- a regular curriculum at a college or university that offers degree programs regardless of whether a diploma is required. *Id.* at 2-3.

The person remains in student status while attending classes regularly. *Id.* at 4. Student status continues during official school vacations and periods of extended illness. *Id.* Student status does not continue if the student is suspended or does not intend to register for the next school term (excluding summer term). *Id.*

There was no dispute that Claimant's daughter was aged 18-49 and attended college on a full-time basis. Accordingly, DHS properly found Claimant's daughter to be in student status.

DHS regulations allow for persons in student status to be eligible for FAP benefits if one of the following requirements are met by the person in student status:

- Receiving FIP.
- Enrolled in an institution of higher education as a result of participation in:
 - A JTPA program.
 - A program under section 236 of the Trade Readjustment Act of 1974 (U. S. C. 2296).
 - Another State or local government employment and training program.
- Physically or mentally unfit for employment.
- Employed for at least 20 hours per week and paid for such employment.
- Self-employed for at least 20 hours per week and earning weekly income at least equivalent to the federal minimum wage multiplied by 20 hours.
- Participating in an on-the-job training program. A person is considered to be participating in an on-the-job training program only during the period of time the person is being trained by the employer.
- Participating in a state or federally-funded work study program (funded in full or in part under Title IV-C of the Higher Education Act of 1965, as amended) during the regular school year (i.e. workstudy).
- Providing more than half of the physical care of a group member under the age of six.
- Providing more than half of the physical care of a group member age six through eleven and the local office has determined adequate child care is not available to:
 - Enable the person to attend class and work at least 20 hours per week.
 - Participate in a state or federally-financed work study program during the regular school year.
- A single parent enrolled full-time in an institution of higher education who cares for a dependent under age 12. This includes a person who does not live with his or her spouse, who has parental control over a child who does not live with his or her natural, adoptive or stepparent. *Id.* at 3-4.

There was no evidence that Claimant's college-aged child met any of the exceptions to for student status. Accordingly, DHS properly excluded the child as a group member and properly considered the FAP benefit group as a one person group.

There was also a dispute concerning Claimant's self-employment income. Claimant specifically disputed how DHS budgeted the income.

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. For changes in self-employment income, DHS is to determine the monthly gross income to budget based on discussion with the client of what he/she expects to receive on average per month. *Id.*

In the present case, DHS used a three month (i.e. approximate 90 day period) to prospect Claimant's self-employment income. Using a 90 day period to prospect income is supported by DHS regulations.

Claimant contended that DHS should have used his year to date income as the basis to prospect employment income. A 90 day period is specifically authorized by DHS regulations; a year-to-date period is not specifically authorized. Though A DHS specialist may have discretion to use a year-to-date period if a client reports that is a superior way to prospect income, DHS cannot be faulted for selecting a period specifically authorized by their regulations. Had Claimant specifically advised DHS that a year-to-date period was the only fair way to gauge his self-employment income, Claimant's argument would have been more persuasive. In fairness to Claimant, it should be noted that year-to-date income records were submitted so DHS had an opportunity to use the income information. However, DHS had no particular reason to use the year-to-date income information over a recent three month period of income. It is found that a 90 day period from 3/2011-5/2011 was a fair way to prospect Claimant's income.

It was not disputed that Claimant's business made a net profit of \$2457.21 in 3/2011 and \$877.33 in 5/2011, while losing \$741.33 in 4/2011. The total net profit from the three months was \$2593.21. Dividing this figure by three creates an average monthly net self-employment income of \$864.

It was not disputed that Claimant received \$1,000/month in salary from his self-employment. The salary was an addition to the business net profit. Thus, Claimant's gross monthly income was \$1864.

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

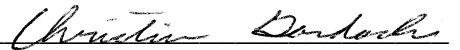
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income test can be performed. The gross income test is only applicable for groups without a senior, disabled or disabled veteran (SDV) member. BEM 556 at 3. It was not disputed that Claimant's FAP group had no SDV members; thus, the gross income test must be performed.

Claimant's gross income was calculated to be \$1864. The gross income limit for a one person FAP group is \$1164. Claimant's gross income exceeds the gross income limit. Accordingly, DHS properly determined Claimant to be ineligible for FAP benefits effective 8/2011. As discussed during the hearing, Claimant may reapply for FAP benefits at any time.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly terminated Claimant's FAP benefits effective 8/2011. The actions taken by DHS are AFFIRMED.


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

Date Signed: August 26, 2011

Date Mailed: August 26, 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.

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