

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.: 2011-4586
Issue No.: 3003
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: December 6, 2010
DHS County: Oakland (02)

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 December 6, 2010. Claimant appeared and testified. [REDACTED], appeared and acted as interpreter for Claimant. [REDACTED], appeared and testified on behalf of the Department of Human Services (DHS).

ISSUE

Whether DHS properly included Refugee Assistance Program (RAP) and Matching Grant Program benefits as unearned income in calculating Claimant's Food Assistance Program (FAP) benefits?

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 September 2, 2010, Claimant applied for FAP benefits with DHS.
2. On September 14, 2010, Claimant was approved for FAP benefits of \$349 per month for a family group of seven people.
3. Claimant has three income sources in his family group: a \$774 Matching Grant Program grant for himself from [REDACTED] \$1,500-\$1,800 [REDACTED] per month, and his daughter receives an [REDACTED] Matching Grant Program grant of \$50 per month.

4. On October 11, 2010, Claimant filed a Request for a Hearing with DHS.

CONCLUSIONS OF LAW

FAP was established by the Food Stamp Act of 1977 and is implemented by Federal regulations 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 Bridges Policy Glossary (BPG). These manuals are available online at www.michigan.gov/dhs-manuals.

The manuals are the policies and procedures that DHS officially created for its own use. While the manuals are not laws created by Congress or the Michigan Legislature, they constitute the 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 item is, I will examine whether it was in fact followed in this case.

In this case, DHS treated all three parts of Claimant's family income as countable income and not as assets, such as accumulated or lump sum benefits. Using these monies as unearned countable income for FAP calculations, DHS determined Claimant's FAP benefit to be \$349 per month.

The question presented by this case is whether Claimant's [REDACTED] and [REDACTED] Matching Grant Program benefits are properly considered countable income for purposes of calculating Claimant's FAP benefits. In this case, there is no dispute that if these monies are counted as income, then DHS correctly calculated Claimant's FAP benefit.

FAP benefits are determined by manual policies and procedures, and I will look first at the items cited to me as authority by DHS in this case. In its Hearing Summary, which was submitted as an exhibit at the hearing, and in testimony presented at the hearing, DHS cited as authority for its action the following manual sections and Glossary definitions: BEM 400, "Assets," BEM 500, "Income Overview," BEM 503, "Income, Unearned," BEM 630, "Refugee Assistance Program," and the Glossary definitions of "lump sum" and "accumulated benefits." I will examine these citations and determine which, if any, are applicable here.

First, I will consider whether all or part of Claimant's benefits are lump sum or accumulated benefits as defined in the DHS Glossary. If some of the assistance Claimant receives falls into one of these categories, they would then be assets and would not be counted as income for FAP program purposes.

"Lump sum" is defined in the Glossary as:

LUMP SUM

A one-time payment that is **not** an accumulation of monthly benefits. Examples: Income tax refunds, inheritances, insurance settlements, injury awards. *Related Terms: Accumulated Benefits*. BPG, p. 26.

In the case before me I do not see that Claimant or any family member received a one-time payment and, therefore, I find that the assistance Claimant receives is not a lump sum payment.

Next, I consider whether any assistance Claimant received is an “accumulated benefit.” The Glossary defines accumulated benefit as follows:

ACCUMULATED BENEFIT

A one-time payment of accumulated non-DHS benefits issued to cover a retroactive period of time or to cover a future period of time. Example: RSDI [Retirement, Survivors, and Disability Income], Veterans Benefits, UI [Unemployment Insurance] Benefits, Workers Compensation. *Related Terms: Lump Sum*. *Id.*, p. 1.

In light of the one-time nature of accumulated benefits, as with the lump sum benefit, I find and decide that none of Claimant’s assistance monies are one-time payments and they are, therefore, not accumulated benefits for FAP calculation purposes. I also considered BEM 400, “Assets,” and I find that this item merely refers the reader to the Glossary for these two definitions. BEM 400, p. 1.

To summarize my reasoning, as Claimant’s assistance program income is not an accumulated benefit or lump sum payment, it is not excludable as an asset. I must now consider whether it is unearned income and, if so, whether it is excludable for some other reason under DHS policies and procedures.

The policies and procedures in BEM 500, “Income Overview,” and BEM 630, “Refugee Assistance Program,” do not address the issue in this case. Rather, I turn to BEM 503, “Income, Unearned,” for the clearest and most relevant guidance.

BEM 503 identifies fifty-one kinds of unearned income. BEM 503 includes definitions of each income type, and for each type it states whether it is countable or should be excluded in each DHS program. It is thirty-three pages long. BEM 503, p. 1.

The fifty-one types 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 benefit, donations/contributions, educational assistance, factor concentrate litigation, Filipino Veterans Equity Compensation Fund, flexible benefits, foster grandparents, government aid, home equity conversion plans, individual development accounts, insurance payments for medical expenses, interest and dividends paid 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, retirement income-other, Retirement, Survivors, and Disability Insurance, 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, 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. BEM 503, pp. 2-29.

BEM 503 contains three types of unearned income which I conclude are the types of income involved in this case: donations/contributions and two types of government aid, the [REDACTED] and [REDACTED] programs. *Id.*, pp. 8, 10-11, and 13. I will consider whether these three types of income are counted as income for the FAP program.

FAP requires donations and contributions from private nonprofit organizations to be counted as unearned income to the *individual*, except for the first \$300 received in a three-month period (calendar quarter). *Id.*, p. 8. Based on this requirement in BEM 503, I find and conclude that the Matching Grant Program funds received by Claimant are properly counted as income for FAP program calculations. I further find that DHS deducted \$300 for the first three months as required.

However, as to Claimant's daughter, [REDACTED], I find that she is a separate individual as defined in BEM 503 and is entitled to her own deduction of \$300 per quarter as well as Claimant. Her Matching Grant is \$50 per month. I conclude and decide that as her grant is less than \$300 in a calendar quarter, it is completely excludable and should not be counted in Claimant's group income. I read BEM 503 to require consideration of each individual, and I read this to mean that if there are multiple Matching Grants in a family group, each individual recipient receives the benefit of the \$300 per calendar quarter deduction. Therefore, I find and conclude that the Matching Grant received by Claimant's daughter is excludable as income to the family group. As to this issue, DHS is PARTIALLY REVERSED. DHS is ordered to recalculate Claimant's FAP grant, excluding the Matching Grant of Claimant's daughter, [REDACTED], from that calculation. *Id.*

Next, as to the government aid Claimant receives, BEM 503 lists two types of aid, [REDACTED]. As [REDACTED] appears to be assistance related specifically to shelter, I do not think it applies in this case. Instead I find and conclude that Claimant is, in fact, receiving [REDACTED] which is required to be countable income in BEM 503. *Id.*, pp. 10-11, and 13.

BEM 503 therefore requires that Claimant's government aid through the [REDACTED] program must be counted as income for FAP decisions. Accordingly I AFFIRM DHS' decision to calculate Claimant's [REDACTED] income as countable income for FAP. DHS, in making appropriate recalculations based on the Matching Grant requirements of BEM 503, shall not exclude Claimant's [REDACTED] income.

In applying DHS policies and procedures to the facts in this case, I have reviewed all of the evidence and testimony in its entirety. I find that DHS is PARTIALLY AFFIRMED and PARTIALLY REVERSED in this matter. IT IS ORDERED that Claimant's daughter's Matching grant shall be excluded as FAP countable income, and Claimant's FAP grant shall be recalculated in accordance with all DHS policies and procedures.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, PARTIALLY AFFIRMS AND PARTIALLY REVERSES the grant of FAP benefits in this case. IT IS ORDERED that DHS shall exclude [REDACTED] Matching Grant Program benefits from Claimant's FAP income calculations. DHS shall recalculate Claimant's FAP benefits and provide appropriate FAP benefits in accordance with all DHS policies and procedures.



Jan Leventer
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: December 8, 2010

Date Mailed: December 9, 2010

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

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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.

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