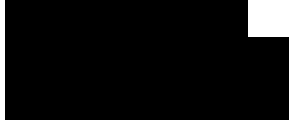


STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No.: 2011-6551
Issue No.: 3015/5016
Case No.:
Hearing Date: December 13, 2010
Wayne County DHS (43)

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 December 13, 2010. The claimant appeared and testified. On behalf of Department of Human Services (DHS), Specialist, and Manager, appeared and testified.

ISSUES

1. Whether DHS properly terminated Claimant's Food Assistance Program (FAP) benefits effective 12/2010 due to excess income by Claimant.
2. Whether DHS properly denied Claimant's SER application dated 9/29/10 due to Claimant's failure to verify her prior six months of income.

FINDINGS OF FACT

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

1. Claimant applied for FAP benefits on 9/20/09.
2. On an unspecified date, DHS determined that Claimant was eligible for ongoing FAP benefits.
3. Claimant received \$394.42/week in disability benefits.
4. DHS received verification that Claimant's spouse was employed and received the following gross earnings: \$769.69 on 9/24/10 (Exhibit 1) and \$670.94 on 9/10/10.

5. Claimant is part of a FAP benefit group of five persons which included Claimant and her spouse.
6. On an unspecified date, DHS determined that Claimant had excess income for FAP benefits effective 12/2010.
7. On 9/29/10, Claimant applied for SER for assistance (Exhibit 6) with payment of an energy bill account (Exhibit 7) in shut-off threat.
8. On 10/8/10, DHS denied Claimant's SER application (Exhibit 3) for failing to provide information needed to determine eligibility specifically citing Claimant's failure to verify six months of income prior to the SER application date.
9. On 11/9/10, Claimant requested a hearing concerning the termination of FAP benefits effective 12/2010 and the denial of SER assistance from Claimant's 9/29/10 SER application.

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 MCL 400.10, *et seq.*, and MAC R 400.3001-3015. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

Claimant had no specific basis for contending that DHS erred in terminating her FAP benefits. BEM 556 outlines the proper procedures for calculating FAP benefits.

The first step in determining the proper FAP benefits is to determine each group members' countable income. It was not disputed that Claimant receives \$394.42/week in gross disability income. For all programs, DHS is to budget the gross amount of insurance payments as unearned income. BEM 503 at 22. Weekly income must be converted to a monthly standard by multiplying the average income by 4.3. BEM 505 at 6. Multiplying Claimant's average check (\$394.42) by 4.3 results in a monthly gross income of \$1696 (dropping cents), the same amount as calculated by DHS.

Claimant's spouse had employment income. DHS received verification from Claimant's employer that Claimant's spouse received bi-weekly gross employment income of \$769.69 on 9/24/10 and \$670.94 on 9/10/10. Claimant's spouse asserted that he only

received \$669.69 on 9/24/10 and brought documentation to the hearing which tended to support that his employer may have incorrectly reported his 9/24/10 income to DHS.

Though DHS may have used incorrect income to determine Claimant's FAP benefit eligibility, the undersigned is somewhat inclined to accept the \$769.69 payment as a proper basis in determining Claimant's FAP benefit eligibility. DHS had no way to know that Claimant's employer reported incorrect income to DHS. DHS should not be faulted for relying on information provided by a client or client's employer. Claimant could have chosen to request the information from his employer prior to submitting it to DHS. Because the wrong income was presented to DHS, Claimant's spouse either did not verify that the income reported to DHS was correct or did not request to verify the income prior to its submission. Based on submitted information, it is found that DHS properly determined Claimant's spouse's income to be \$769.69 as received on 9/24/10.

DHS converts biweekly non-child support income into a 30 day period by multiplying the average income by 2.15. BEM 505 at 6. Multiplying Claimant's countable average biweekly income (\$720.31) by 2.15 results in a monthly countable income amount of \$1548, the same amount as calculated by DHS.

DHS only counts 80% of a FAP member's reported monthly gross employment income in determining FAP benefits. 80% of Claimant's spouse's employment income is \$1238 (dropping cents). Adding the monthly gross countable income of Claimant (\$1696) and Claimant's spouse (\$1238) results in a total monthly countable income of \$2934.

Claimant's five-person FAP group receives a standard deduction of \$178. RFT 255. The standard deduction is subtracted from the countable monthly income to calculate the group's adjusted gross income. Claimant's FAP benefit group's adjusted gross income amount is found to be \$2756.

DHS uses certain expenses to determine net income for FAP eligibility and benefit levels. BEM 554 at 1. For groups without a senior, disabled or disabled veteran (SDV) member, DHS considers the following expenses: childcare, excess shelter (housing and utilities) up to the maximum allowed amount and court ordered child support and arrearages paid to non-household members. *Id.* DHS may consider medical expenses for any group members that are senior, disabled or a disabled veteran. *Id.* No other expenses may be considered.

Claimant's shelter costs were not disputed. Claimant agreed that DHS properly gave her credit for an \$899.25/month housing obligation. Claimant was issued the maximum utility credit allowed by DHS policy, \$588. RFT 255. The rent/mortgage expense (\$899.25) is added to the utility credit (\$588) to calculate Claimant's total monthly housing obligation of \$1487 (rounding to nearest dollar), the same amount as calculated by DHS.

Claimant's excess shelter credit is the difference between Claimant's housing costs (\$1487) and half of Claimant's adjusted gross income. The excess shelter amount is found to be \$109, the same as calculated by DHS.

The FAP group's net income is determined by taking the group's adjusted gross income (\$2756) and subtracting the excess shelter cost (\$109). The FAP group's net income is found to be \$2647. Based on a FAP group of five persons, the net income limit for FAP benefits is \$2150/month. RFT 250 at 1. Claimant's countable net income exceeds the FAP benefit net income limit. It should be noted that even if the lower 9/24/10 check amount (\$669.69) was used for Claimant's spouse's employment, the FAP group's income would have still exceeded the net income limits. It is found that DHS properly terminated Claimant's FAP benefits due to excess income.

The State Emergency Relief (SER) program is established by 2004 PA 344. The SER program is administered pursuant to MCL 400.10, *et seq.*, and by final administrative rules filed with the Secretary of State on October 28, 1993. MAC R 400.7001-400.7049. Department of Human Services (formerly known as the Family Independence Agency) policies are found in the Emergency Relief Manual (ERM).

SER is a program which offers assistance for various client emergencies. Clients may seek assistance through SER for any of the following: heat or gas bills, water bills, electricity bills, home repairs, rent or mortgage arrearages, relocation expenses including rent and security deposit, food, burials or migrant hospitalization.

To be eligible for energy service assistance, an SER group must make required payments toward their energy service bills unless the case is categorically eligible. The required payment amounts are based on the group size and service (heat or electric).

To be categorically eligible for SER assistance for energy services, all SER group members must be active on the applicant's Family Independence Program (FIP), Supplemental Security Income (SSI) or FAP benefits case. ERM 301 at 2. In the present case, it is believed, though not certain, that Claimant was not categorically eligible for SER because she was not actively receiving FAP benefits at the time the SER decision was made.

To be eligible for energy service assistance, an SER group must make required payments toward their energy service bills unless the case is categorically eligible. *Id* at 4. If required energy payments have not been met, DHS will determine if good cause for non-payment exists. *Id* at 6. Failure to make required payments without good cause may result in a shortfall. *Id*. Good cause for failure to meet obligations for shelter, energy, or utilities exists if:

- The SER group's net countable income from all sources during each month the group failed to pay shelter/energy/utility obligations was less than the amount shown for the SER group size in the "good cause" table below, and
- The income was not reduced by a disqualification of SSI or department benefits for failure to comply with a program requirement.

OR

- The emergency resulted from unexpected expenses related to maintaining or securing employment.

The good cause amount for a group of five persons is \$285. Claimant conceded on her SER application that her income greatly exceeded \$285 for each of the six months prior to her SER application date. Thus, Claimant conceded her income was too great to establish good cause.

The DHS denial based on a failure to verify six months of income is improper on three fronts. First, DHS required something that DHS policies do not require; nowhere in SER policy is a client required to verify six months of income.

Secondly, DHS requested information which if verified, could not be helpful to Claimant. In other words, there was simply no point in requiring Claimant to verify the income. It would be akin to requiring verification of a \$0/month shelter obligation for purposes of FAP benefits; as a client would have no incentive to report zero shelter obligation, DHS regulations appropriately require no verification of it.

Thirdly, DHS concedes that no official request was made from client concerning the prior six months of income. Clients must be informed of all verifications that are required and where to return verifications. ERM 103 at 5. The due date is eight calendar days beginning with the date of application. *Id.* Specialists are to use the DHS-3503, SER Verification Checklist, to request verification and to notify the client of the due date for returning the verifications. *Id.* In the present case, DHS presented a copy of a cover sheet that is given to clients when an SER application is given. The cover sheet provides clients instructions on how to apply for SER and highlights some of the information needed for SER application processing. It should be noted that the cover sheet makes no reference to a requirement for six months of income verification. More importantly, the cover sheet may not serve as a substitute for a Verification Checklist.

DHS also contended that Claimant failed to verify a full 30 days of income prior to her SER application. Income verifications seemed to contradict this, however, the DHS contention is irrelevant as it was established that DHS made no attempt to verify the income. As stated above, information must be requested via Verification Checklist.

It is not known whether Claimant was eligible for SER benefits on 9/29/10. However, it is found that DHS improperly denied Claimant's SER application dated 9/29/10 based on Claimant's failure to verify six months of income.

Claimant conceded that she received SER assistance for energy subsequent to her SER application dated 9/29/10. Claimant contends that the amount of assistance she subsequently received was less than what she would have received had DHS approved her 9/29/10 application. Claimant may not receive more SER benefits to which she would have been entitled to but for the DHS error in denying Claimant's application. Similarly, DHS may not issue lesser benefits because of their own error.

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 12/2010 due to excess income. The actions taken by DHS are PARTIALLY AFFIRMED.

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS improperly denied Claimant's application dated 9/29/10 for SER benefits. It is ordered that DHS reinstate Claimant's 9/29/10 SER application and to budget Claimant's prior six months of income with information provided by Claimant on her SER application. DHS shall process the application in accordance with the circumstances at the time of Claimant's SER application date (i.e. the past due amount as of 9/29/10). DHS may reduce Claimant's SER approval by the amount of subsequently approved SER payments. DHS shall also inform Claimant's energy service provider of the approval and seek waiver of any out-of-pocket reconnection costs paid by Claimant. The actions taken by DHS are PARTIALLY REVERSED.

Christian Gardocki

Christian Gardocki
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: 12/27/2010

Date Mailed: 12/27/2010

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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