

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201221342
Issue No.: 3026
Case No.: [REDACTED]
Hearing Date: January 25, 2012
Oakland County DHS (02)

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 January 25, 2012 from Detroit, Michigan. The claimant appeared and testified; Edward Sana appeared and testified as Claimant's authorized hearing representative. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, and [REDACTED], Manager, appeared and testified.

ISSUE

The issue is whether DHS properly evaluated Claimant's self-employment income in determining Food Assistance Program (FAP) benefit eligibility.

FINDINGS OF FACT

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

1. On 11/28/11, Claimant applied for FAP benefits.
2. Claimant's spouse was a self-employed individual.
3. On an unspecified date, Claimant submitted self-employment income and expenses covering the period of 8/2011-10/2011.
4. On an unspecified date, Claimant submitted a 2010 tax return (Exhibit 3).
5. DHS did not request verification of Claimant's 2010 self-employment expenses.

6. On an unspecified date, DHS determined Claimant's FAP benefit eligibility using the gross income from the 2010 tax return and a standard 25% self-employment expense reduction (see Exhibit 1).
7. On 12/15/11, DHS mailed a Notice of Case Action (Exhibit 2) denying Claimant's FAP benefit application due to excess income.
8. On 12/19/11, Claimant requested a hearing to dispute the DHS denial 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 controlling DHS regulations are those that were in effect as of 11/2011, the effective 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/>.

A request for program benefits begins with the filing of a DHS-1171 or other acceptable form. BAM 110 at 1. Before processing an application for FAP benefits, DHS may require a client to verify information within the application. Verification is usually required at application. BAM 130 at 1.

Countable income must be verified at application for FAP benefits. BEM 500 at 9. Employment income is countable income. BEM 501 at 5. Countable income from self-employment equals the total proceeds minus allowable expenses of producing the income. BEM 502 at 3. Allowable expenses are the higher of 25 percent of the total proceeds, or actual expenses if the client chooses to claim and verify the expenses. *Id.*

For non-child support income, DHS is to use income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month. BEM 505 at 4. Alternatively, DHS may 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.* Irregular income such as self-employment may be prospectively based on a longer average. *Id.* at 7.

The present case involves a dispute over how self-employment income was budgeted concerning a FAP benefit application dated 11/28/11. DHS chose to budget Claimant's 2010 self-employment gross income based on a 2010 tax return. To determine self-employment expenses, DHS did not rely on the 2010 tax return expenses and instead applied a standard 25% expense deduction. Applying these standards, DHS determined Claimant was ineligible for FAP benefits.

Claimant provided testimony that her spouse was a delivery driver who owned his own business. Her spouse was paid some amount for a delivery and Claimant's spouse was responsible for all of the expenses associated with the delivery including the cost of gas. Claimant's spouse received direct deposits into the business account following each delivery and expenses were paid from the same account.

DHS originally requested information of Claimant's self-employment income and expenses from 8/2011-10/2011; this tends to show that DHS believed a 90 day period to be an accurate reflection of Claimant's income. In response, Claimant submitted records such as direct deposit verifications and receipts from 8/2011-10/2011. DHS did not clarify why the 8/2011-10/2011 income and expense records were insufficient. Based on the documents alone, DHS may have been uncertain about what the records verified, but DHS could have discussed the matter with Claimant to clarify the matter. There is no evidence that DHS did so.

Instead, DHS used income information from several months earlier to prospect self-employment income. Doing so may not violate DHS regulations, but it presented some problems in the present case. First, it is not known why 2010 records would be superior to 8/2011-10/2011 records. Also, DHS relied on a 2010 tax return to verify income but DHS did not allow the record to verify expenses. DHS states that they must have actual receipts to give credit for expenses but it is not believed that DHS specifically requested those receipts in this case.

Based on the presented evidence, it is found that DHS should have determined Claimant's FAP benefit eligibility based on 8/2011-10/2011 self-employment records. Accordingly, the DHS FAP benefit determination which relied on 2010 income information without requesting 2010 expense records is found to be improper.

DECISION AND ORDER

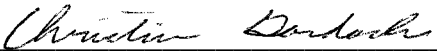
The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS improperly denied Claimant's application for FAP benefits. It is ordered that DHS:

- reinstate Claimant's FAP benefit application dated 11/28/11;

201221342/CG

- determine Claimant's FAP benefit eligibility based on 8/2011-10/2011 income and expenses; and
- supplement Claimant for any benefits not received if Claimant is found eligible for FAP benefits.

The actions taken by DHS are REVERSED.


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

Date Signed: February 1, 2012

Date Mailed: February 1, 2012

NOTICE: Michigan Administrative Hearing System (MAHS) 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. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request. (60 days for FAP cases).

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.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

201221342/CG

Request must be submitted through the local DHS office or directly to MAHS by mail to:
Michigan Administrative hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

CG/hw

cc:

