

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201230084
Issue No.: 3002
Case No.: [REDACTED]
Hearing Date: March 1, 2012
County: Oakland 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 following Claimant's request for a hearing. After due notice, a telephone hearing was held on March 1, 2012 from Detroit, Michigan. Participants on behalf of Claimant included the above named claimant. Participants on behalf of Department of Human Services (DHS) included [REDACTED], Specialist and [REDACTED], Manager.

ISSUE

The issue is whether DHS properly determined Claimant's Food Assistance Program (FAP) benefit eligibility effective 1/2012.

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's FAP benefit period was scheduled to end 12/2011, thus requiring DHS to perform a FAP benefit redetermination.
3. Claimant was part of a household of one person.
4. Claimant was eligible for \$838.90/month in gross Retirement, Survivor, Disability Insurance (RSDI).

5. \$99.90 of Claimant's ongoing RSDI benefit went to the payment of a Part B Medicare premium.
6. Claimant verified self-employment gross income averaging \$318/month.
7. Claimant was responsible for a \$234/month rent.
8. On 1/23/12, DHS found Claimant was eligible for \$68/month in FAP benefits effective 1/2012 (see Exhibit 1).
9. On 1/30/12, Claimant requested a hearing to dispute his 1/2012 FAP benefit eligibility as calculated by DHS.

CONCLUSIONS OF LAW

Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

The Food Assistance Program (FAP) [formerly known as the Food Stamp (FS) 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 (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, R 400.3001 through R 400.3015.

The present case involved a dispute of FAP benefit eligibility effective 1/2012. BEM 556 outlines the proper procedures for calculating FAP benefits.

It was not disputed that Claimant received \$838.90/month in gross RSDI benefits. For all programs, the gross amount of RSDI is countable income. BEM 503 at 20.

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.

In the present case, DHS prospectively based Claimant's income on self-employment income reported from 3/2011-5/2011. DHS testimony established that updated self-employment income was requested from Claimant and returned to DHS. DHS testimony also established that instead of returning a standard DHS form (the DHS-431), Claimant returned approximately 16 pages of documents concerning self-employment income and expenses. DHS testified that the returned records were exceptionally confusing and could not reasonably be expected to verify Claimant's updated self-employment income.

Claimant essentially conceded the DHS point. In redetermining Claimant's FAP eligibility, DHS relied on self-employment verifications from 3/2011-5/2011 and ignored the newly presented documents. Reliance on older income verifications is not a preferred method of verification, DHS has some discretion in their regulations. If neither the client nor the DHS specialist can obtain verification despite a reasonable effort, DHS is to use the best available information. BAM 130 at 3. In the present case, the older self-employment verification forms were the best available information.

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.*

It was not disputed that Claimant verified average self-employment income of \$318/month. There was no evidence that Claimant sufficiently verified self-employment expenses that exceeded the standard deduction. Thus, 25% is the proper expense deduction creating a net self-employment amount of \$238 (rounding down).

DHS only counts 80% of a FAP member's timely reported monthly gross employment income in determining FAP benefits. Applying the 20% deduction to the net self-employment income creates a countable monthly employment income of \$190 (dropping cents). Adding Claimant's countable self-employment and RSDI creates a total countable income of \$1029 (rounding to nearest dollar).

DHS uses certain expenses to determine net income for FAP eligibility and benefit levels. BEM 554 at 1. For groups without a senior (over 60 years old), disabled or disabled veteran (SDV) member, DHS considers the following expenses: child care and excess shelter (housing and utilities) up to a capped amount and court ordered child support and arrearages paid to non-household members. For groups containing SDV members, DHS also considers the medical expenses for the SDV group member(s) and the full excess shelter expense.

Verified medical expenses for SDV groups, child support and day care expenses are subtracted from Claimant's monthly countable income. Claimant noted having medical expenses of \$99.90/month. DHS only counts medical expenses exceeding \$35/month. Thus, the proper medical expense credit after applying the copayment is \$65 (rounding to nearest dollar). The running income total is reduced to \$964.

Claimant's FAP benefit group received a standard deduction of \$146. RFT 255 at 1. The standard deduction is given to all FAP benefit groups, though the amount varies based on the benefit group size. The standard deduction is also subtracted from the countable monthly income to calculate the group's adjusted gross income. The adjusted gross income amount is \$818.

It was not disputed that Claimant's last reported rent obligation was \$234/month. DHS gives a flat utility standard to all clients. BPB 2010-008. The utility standard of \$553 (see RFT 255) encompasses all utilities (water, gas, electric, telephone) and is unchanged even if a client's monthly utility expenses exceed the \$553 amount. The total shelter obligation is calculated by adding Claimant's housing expenses to the utility credit (\$553). The total shelter obligation is found to be \$787.

DHS only credits FAP benefit groups with what DHS calls an "excess shelter" expense. This expense is calculated by taking Claimant's total shelter obligation and subtracting half of Claimant's adjusted gross income. The excess shelter credit is found to be \$378.

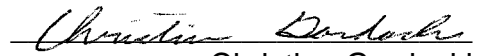
The FAP benefit group's net income is determined by taking the group's adjusted gross income and subtracting the allowable excess shelter expense. The FAP benefit group net income is found to be \$440 for 1/2012. A chart listed in RFT 260 is used to determine the proper FAP benefit issuance. Based on Claimant's group size and net income, Claimant's proper FAP benefit amount is found to be \$68 for 1/2012, the same amount calculated by DHS (see Exhibit 2).

It should be noted that Claimant can report a self-employment income change to DHS at anytime. Claimant provided testimony that his self-employment income decreased since 5/2011. Though it is not mandatory, it is recommended that Claimant verify the reduction in the format of a DHS-431 Self Employment Income and Expense Statement.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department did act properly when determining Claimant's FAP benefit eligibility effective 1/2012.

Accordingly, the Department's AMP FIP FAP MA SDA CDC decision is AFFIRMED REVERSED for the reasons stated on the record.


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

Date Signed: March 6, 2012

Date Mailed: March 6, 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.

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:

