

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201252275
Issue No: 3003
Case No: [REDACTED]
Hearing Date: June 13, 2012
Washtenaw County DHS

ADMINISTRATIVE LAW JUDGE: Christopher S. Saunders

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 June 13, 2012. The claimant personally appeared and provided testimony.

ISSUE

Whether the department properly reduced the claimant's benefits for the Food Assistance Program (FAP) due to excess 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. The claimant was a recipient of FAP benefits at all times pertinent to this hearing.
2. On May 1, 2012, the department sent the claimant a notice of case action (DHS1605) stating that her FAP benefits would be decreasing as of June 1, 2012 due to excess income. (Department Exhibit 10).
3. The department determined the amount of the claimant's FAP benefits after completing a budget which used a total amount of unearned income of [REDACTED]. (Department Exhibit 4).
4. On May 7, 2012, the claimant filed a hearing request protesting the reduction in her FAP benefits.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his claim for assistance is denied. MAC R 400.903(1).

Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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 of Human Services (DHS or department) 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 Bridges Reference Manual (BRM).

For FAP purposes, all earned and unearned income available to Claimant is countable. Earned income means income received from another person or organization or from self-employment for duties that were performed for compensation or profit. Unearned income means all income that is not earned, including but not limited to funds received from the Family Independence Program (FIP), State Disability Assistance (SDA), Child Development and Care (CDC), Medicaid (MA), Social Security Benefits (RSDI/SSI), Veterans Administration (VA), Unemployment Compensation Benefits (UCB), Adult Medical Program (AMP), alimony, and child support payments. The amount counted may be more than the client actually receives because the gross amount is used prior to any deductions. BEM 500.

The department determines a client's eligibility for program benefits based on the client's actual income and/or prospective income. Actual income is income that was already received. Prospective income is income not yet received but expected. Prospective budgeting is the best estimate of the client's future income. BEM 505.

In the case at hand, the department representative testified that the claimant's budget included an amount of [REDACTED] in monthly SSI income. The claimant testified that she only receives [REDACTED] per month in SSI income. The department representative testified that the amount of SSI income used by the department comes from the amount that the claimant is paid [REDACTED] plus [REDACTED] that is withheld from the claimant's check to correct an overpayment (see Department Exhibit 11). The department representative testified that the amount withheld from the claimant's checks for the overpayment must be added to the amount actually received by the claimant in order to arrive at the gross monthly amount for the claimant. BEM 500 defines how the department is to calculate

gross income and the amounts to be included in gross income. BEM 500 states in pertinent part as follows:

Reduced Benefits Due to Overpayment

Amounts deducted by an issuing agency to recover a previous overpayment or ineligible payment are not part of gross income. Enter the amount of an overpayment deducted in the **overpayment amount** field in the monthly deductions section on the unearned income details screen. Bridges excludes these amounts as income.

Exceptions: The following overpayment amounts **must** be included in gross income and should **not** be entered in the **overpayment amount** field:

- Any portion of an overpayment (that is normally countable) if the original payment was excluded income when received.
- Cash assistance recoupment amounts due to IPV are automatically counted for FAP in Bridges.
- SSI amounts recouped due to Intentional Program Violation (IPV) are included in countable gross income for cash assistance programs and FAP. IPV means there is a finding of fraud or an agreement to repay in lieu of prosecution. Do not enter recouped SSI in the overpayment amount field when IPV information is volunteered by the SSI recipient or other reliable source. Do not initiate any contacts to obtain this information. BEM 500.

In this case, the department testified that the amount withheld from the claimant's SSI checks was being included in the claimant's income for purposes of calculating gross income. Based on the policy cited above, the department should not have included the amount withheld from the claimant's SSI checks as income. The department did not provide any evidence that the amount withheld falls within any of the exceptions outlined in policy. Accordingly, the Administrative Law Judge determines that the department did not properly calculate the claimant's budget and in turn did not properly reduce the claimant's FAP benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department improperly reduced the amount of the claimant's FAP benefits.

Accordingly, the department's actions are **REVERSED**.

It is HEREBY ORDERED that the department shall initiate a redetermination of the claimant's FAP eligibility and recalculate the claimant's budget using proper unearned income amounts in accordance with policy. If the claimant is otherwise eligible, the department shall then issue benefits in accordance with policy back to the date of negative action (June 1, 2012) and, if applicable, issue any past due benefits due and owing that the claimant is otherwise eligible to receive.

/s/

Christopher S. Saunders
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: June 19, 2012

Date Mailed: June 19, 2012

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 date of the rehearing decision.

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