

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

IN THE MATTER OF:



Reg. No. 201210148
Issue No. 3026
Case No. [REDACTED]
Hearing Date: December 1, 2011
SSPC West DHS

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 1, 2011 from Detroit, Michigan. The claimant appeared and testified. On behalf of Department of Human Services (DHS), Fiona Robles, Specialist, and Robyn Bullock, Manager, appeared and testified.

ISSUE

The issue is whether DHS properly evaluated Claimant's self-employment expenses in determining Claimant's 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 9/19/11, Claimant applied for FAP benefits.
2. Claimant received ongoing self-employment income.
3. Claimant reported various gross self-employment income amounts from 6/2011-8/2011.
4. Claimant verified various self-employment expenses from 6/2011-8/2011.
5. Claimant's documents verified some expenses were incurred in a period prior to 6/2011 but were paid by Claimant during 6/2011-8/2011.

6. DHS evaluated Claimant's FAP benefit eligibility by crediting Claimant the self-employment expenses from the date the expense was incurred.
7. On 10/27/11, DHS determined Claimant had excess income for FAP benefit eligibility.
8. On 11/3/11, Claimant requested a hearing disputing the termination 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 10/2011, the 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/>.

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.*

In the present case, DHS utilized a 90 day period (6/2011-8/2011) to prospect Claimant's self-employment income and expenses. In response to a DHS request, Claimant sufficiently verified income and expenses from 6/2011-8/2011. In budgeting Claimant's expenses, DHS chose to look to the date that the expenses were incurred. Claimant contended that DHS should have utilized the date the expenses were paid. The result was that DHS found Claimant to have excess income for FAP benefits by failing to factor Claimant's expenses incurred prior to 6/2011 but paid by Claimant between 6/2011-8/2011.

The DHS regulations concerning self-employment discuss the types of expenses that are allowed but are silent as to which date the expenses should be credited. A look at the types of verification that DHS accepts tends to slightly boost Claimant's contention. The only acceptable listed verification is receipts. Receipts tend to verify payment dates not dates of billing. This is not particularly persuasive interpretation as "receipts" could

be interpreted more broadly and include items such as invoices which would typically verify dates that expenses were incurred.

Generally, when DHS regulations are silent on a disputed issue, and equally reasonable interpretations can be made to resolve the issue, the interpretation that favors the client will be preferred. As DHS has control of their own policy, they can easily resolve the dispute with a more explicit statement of policy. Thus, this is another consideration which tends to favor Claimant as both sides have presented reasonable interpretations of DHS regulations.

An interpretation favoring a date of payment may also be preferable when DHS uses the same standard for income. For example, if a self-employment client bills a customer, DHS would not consider the money to be income until the client actually received payment for the service. Applying the same standard to expenses would logically dictate that the date of payment is preferable to a date that the expense is incurred. However, there may be fact scenarios where a different policy interpretation is made. Ideally, DHS policy makers will provide policy clarifications to resolve this issue in the future. Based on the above considerations, there is slightly more basis to find that DHS should have considered self-employed expenses based on a pay date rather than an incurred date.

DECISION AND ORDER

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

- (1) reinstate Claimant's FAP benefits effective 11/1/11.
- (2) recalculate Claimant's self-employment expenses based on the verified date of payment by Claimant;
- (3) supplement Claimant for any FAP benefits not received as a result of the recalculation.

The actions taken by DHS are REVERSED.



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

Date Signed: 12/7/11

Date Mailed: 12/7/11

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:



C. Gardocki
Administrative Hearings