

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

IN THE MATTER OF:



Reg. No: 201258708
Issue No: 3026
Case No: [REDACTED]
Hearing Date: July 18, 2012
Mason County DHS

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; and MCL 400.37 upon claimant's request for a hearing. After due notice, a hearing was held on July 18, 2012. Claimant appeared and testified.

ISSUE

Did the Department of Human Services properly determine Claimant's Food Assistance Program (FAP) eligibility on May 29, 2012?

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 was an ongoing recipient of Food Assistance Program (FAP) benefits.
2. On March 8, 2012, Claimant submitted a Semi-Annual Contact Report (DHS-1046).
3. On April 26, 2012, a Verification Checklist (DHS Form 3503) was sent to Claimant. The Department was requesting verification of "Other Self Employment" for Claimant. The form states "Requested Proof (Return one of the following) Recent business receipts to date, Recent accounting or other business records to date, Recent income tax return ."
4. Claimant submitted copies of his 2011 federal tax returns within the required time limit.
5. On May 29, 2012, the Department ran a Food Assistance Program (FAP) financial eligibility budget for Claimant. Claimant's gross income from the

tax returns was used as self employment income and the Department applied the standard 25% expense deduction. The budget showed that Claimant was not eligible for any Food Assistance Program (FAP) benefits due to being over the income limit. Claimant was sent a Notice of Case Action (DHS-1605).

6. On June 8, 2012, Claimant submitted a request for hearing.

CONCLUSIONS OF LAW

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 Program Reference Manual (PRM).

In this case Claimant asserts that his self employment expenses are more that 25% of his gross income and that he turned in what the Verification Checklist (DHS Form 3503) required and it did not require that he submit receipts for his self employment expenses. Department policy provides the following guidance for case workers. The Department's policies are available on the internet through the Department's website.

BEM 502 INCOME FROM SELF-EMPLOYMENT DEPARTMENT POLICY All Types of Assistance (TOA)

This item identifies all of the following:

- Guidelines for determining if an individual's income is considered to be from employment or self-employment.
- Allowable expenses of producing self-employment income.
- Self-Employment income types.

COUNTABLE SELF-EMPLOYMENT INCOME

Countable income from self-employment equals the total proceeds **minus** allowable expenses of producing the income. If allowable expenses exceed the total proceeds, the amount of the loss cannot offset any other income **except** for farm loss amounts. See Farming Expenses below.

Example: An individual operates a retail store. Total proceeds for the month are [REDACTED]. Allowable expenses total [REDACTED]. The [REDACTED] deficit **cannot** be used to offset any other income.

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.

SELF-EMPLOYMENT EXPENSES

Allowed

Allowable expenses include all of the following:

- Identifiable expenses of labor, stock, raw material, seed, fertilizer, etc.
- Interest and principal on loans for equipment, real estate or income-producing property.
- Insurance premiums on loans for equipment, real estate and other income-producing property.
- Taxes paid on income-producing property.
- Transportation costs while on the job (example: fuel).
- Purchase of capital equipment.
- A child care provider's cost of meals for children. Do **not** allow costs for the provider's own children.
- Any other identifiable expense of producing self-employment income except those listed below.

Not Allowed

Do **not** enter any of the following as self-employment expenses in Bridges:

- A net loss from a previous period.
- Federal, state and local income taxes.
- Personal entertainment or other individual business expenses.
- Money set aside for retirement.
- Depreciation on equipment, real estate or other capital investments.

Claimant has raised a notice issue. Specifically Claimant is asserting he did not know there was a choice between suing 25% and verification of claimed expenses. Claimant asserts if he had known that he would have submitted his receipts.

Claimant has received Food Assistance Program (FAP) benefits for a period before this. Claimant was self employed and had submitted receipts for his self employment expenses in the past.

The fact that Claimant had previously submitted receipts does not mean that the Department still had the same policy regarding self employment expenses. Claimant is not required to keep abreast of Department policy. Nothing on a Semi-Annual Contact Report (DHS-1046) or the Verification Checklist (DHS Form 3503) sent to Claimant gives him notice of the self employment expense option and requirement to provide

receipts for self employment expense if he chooses that option. The Verification Checklist (DHS Form 3503) stated he should return at least one of three listed proofs which included income tax returns. Claimant did that by returning his 2011 income tax returns. The income tax returns include self employment expenses in accordance with income tax laws. While self employment expenses under the federal tax code and those for Food Assistance Program (FAP) are very different, Claimant is still not required to stay abreast of Department policy.

Department policy gives self employed individuals a choice of how their business expenses are calculated. The specific circumstances in this case failed to give Claimant notice of the choice or the opportunity to exercise the choice. Therefore, the processing of Claimant's FAP redetermination was not in accordance with Department policy.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department of Human Services DID NOT properly determine Claimant's Food Assistance Program (FAP) eligibility on May 29, 2012

It is ORDERED that the actions of the Department of Human Services, in this matter, are REVERSED.

It is further ORDERED that Claimant's Food Assistance Program (FAP) case be reinstated and his ongoing eligibility be determined in accordance with Department policy.

/s/ _____
Gary F. Heisler
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: July 23, 2012

Date Mailed: July 24, 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.

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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.

GFH/tb

cc:

