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

IN THE MATTER OF:



Reg. No.: 2013-33877

Issue No.: 3015

Case No.:

Hearing Date: April 3, 2013 County: Oakland (02)

ADMINISTRATIVE LAW JUDGE: Zainab Baydoun

HEARING DECISION

This matter is before the undersigned Administ rative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claim ant's request for a hearing. After due notice, a telephone hearing was conducted on Wednesday, April 3, 2013 from Detroit, Michigan. Claimant and her mother, appeared and tes tified. Participating on behalf of the Depar tment of Human Serv ices (Department) was Assistance Payment Supervisor.

ISSUE

Due to excess income, did the Department properly deny Claimant 's applic ation for Food Assistance Program (FAP) benefits?

FINDINGS OF FACT

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

- 1. On February 13, 2013, Claimant submitted an application for FAP benefits.
- 2. On February 21, 2013, the Department sent Claimant a Notic e of Case Action denying her application for FAP benefits due to excess income. (Exhibit 1)
- 3. On March 4, 2013, Claim ant filed a hear ing request disputing the Department's actions.

CONCLUSIONS OF LAW

Department policies are contained in the Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Referenc e 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 amend ed, and is implemented by the federal regulations contained in Title 7 of the Code of Feder al Regulations (CFR). The Department (formerly known as the Fam ily Independence Agency) administers FAP pursuant to MCL 400.10, et seq., and Mich Admin Code Ru le 400.3001 through Rule 400.3015.

In this case, Claimant submitted an applic ation for FAP benefits for herself, her two children and her mother on Fe bruary 13, 2013. Claim ant's FAP budget was calculated and the Department determined t hat Claimant was not eligible to receive F AP benefits because her net income was \$2,525.00, which hexceeded the limit. For FAP purposes, the applicable FAP net income limit for Claimant's group size of four is \$1,921.00. RFT 250 (October 2012), p. 1. On February 21, 2013, the Department sent Claimant a Notice of Case Action informing her that her application for FAP benefits was denied due to excess income. (Exhibit 1). The i ssues presented at the hearin g were the calculation of Claimant's earned and unearned income.

Earned Income

In calculating Claimant's earned income, the Department testifed that it relied on Claimant's paychecks from Tar get and Claimant's mother's reported income from self-employment.

All countable earned and unearned income available to the client must be considered in determining the Claimant's eligibility for program benefits. BE M 500 (January 2013). pp. 1-3. The Depart ment determines a cli ent's eligibility for program benefits based on the client's actual income and/or prospective income. Prospective income is income not yet received but expected. BEM 505 (October 2010), p. 1. In calc ulating a client's earned income, the Department must determine a best estimate of income expected to be received by the client during a specific month. BEM 505 (Oct. ober 2010), p 2. In prospecting income, the Department is required to use income from the past thirty days if it appears to accurately reflect what is expected to be received in the benefit month, discarding any pay if it is unusual and does not re flect the normal, expected pa amounts. BEM 505, p. 4. A standard monthly amount mu st be determined for each p. 6. Income received biweekly is income source used in the budget. BEM 505. converted to a standard amount by multiply ing the average of two biweek ly paychecks by the 2.15 multiplier. BEM 505, pp. 6-7.

At the hearing, the budget fr om the FAP EDG Net Income Results was reviewed. (Exhibit 2). The Department concluded that Claimant's earned income from Target was \$735.00. Claimant's income was converted to a standard monthly amount by multiplying

the average of her two paychecks (\$303.56 from Januar y 18, 2013 and \$380.70 from February 1, 2013) by the 2.15 mull tiplier. (Exhibit 3). An issue was raised during the hearing as to whether the paychecks from Target should be counted towards earned income or unearned income due to Claimant's testimony that she had not been working since October 23, 2012 because of a short term disability and that Target was paying her during that time off. A further review of policy and the paychecks presented establishes that the income Claimant received from Target should be treated as regular wages paid during illness and counted as earned income. BEM 500, p.9. and BEM 501 (July 2012), p. 5. Therefore, the Department properly calculated Claimant's earned income from Target and properly applied the 20% earned income deduction. BEM 550 (February 2012), p. 1.

Additionally, the Department considers in come earned from self-employment in the calculation of earned income. BEM 500, p. 1-3. At the hear ing, the Department acknowledged that it acted in error when calculating Claimant's mother's earned income from self-employment. Countable income from self-employ ment equals the total proceeds minus allowable exp enses of producing the income. Allowable expenses are the higher of 25% of the total proceeds, or actual expenses if the client chooses to claim and verify the expens es. BEM 502 (October 2012), p. 3. On Claimant's application for FAP benefits, she indicated t hat the gross monthly income from self-employment was \$3,000.00 to \$4,000.00. (Exhibit 6). In deter mining Claimant's self-employment income, the Department testified that it budgeted \$3,000.00 fo r November, \$3,000.00 for December and \$3,000.00 for January; however, rather than divide this amount by three months to get the average, the Department incorrectly divided by four months to receive an average monthly self-employment inc ome of \$2,250.00. After applying the 25% deduction for expenses, the Department determined Claimant's unearned income to be \$1,687.00. Therefore, the Department did not properly call culate Claimant's earned income from self-employment.

Unearned Income

The Department concluded that Claimant had unearned income of \$889.00 which came from two sources: \$667.00 in RSDI benefits for Claimant's mother, and \$222.64 in child support for Claimant's children.

Money earned from Retirement, Survivors, Disability Insurance (RSDI) is included in the calculation of unearned income for purpos es of FAP budgeting. BEM 503 (November 2012). The SOLQ presented verified that \$667.00 is received monthly in RSDI benefits. (Exhibit 5, p.1).

In this case, Claimant's mother was the legal guardian of Claim ant's two children and Claimant was ordered to pay child support to her mother for the care of the children. At the time of application, Claimant, her mother and Claimant is two children all lived together and were members of the same group for FAP purposes. See BEM 212 (November 2012). Child support is money paid by an **absent parent(s)** for the living expenses of children and is considered unearned income. The total amount of court-ordered direct support (which is support an individual receives directly from the absent

parent or the Michigan Stat e Disbursement Unit (Mi SDU)) is counted as unearned income and is considered in the calculation of a client's gross unearned income. BEM 503 (November 2012), pp 5, 7; BEM 556 (O ctober 2011), p 2. The Department testified that it calculated Claimant's unearned income from child support to be \$222.64. Contrary to the figures presented by the Department, Claimant st ated and her mother confirmed that Claimant pays her mother \$65.00 bi-weekly in child support for both of her children. The pay checks submitted by Cla imant also verified that \$65.00 is being garnished from her bi-weekly pay for this pur pose. (Exhibit 4, pp. 2, 4). Additionally, because Claimant is the pay er of child suppor t and Claimant's mother (a household member) is the payee; the child support deduction is not applicable in this case. BEM 554 (October 2012), pp.4-5. Cla imant is not granted the ben efit of a child sup port deduction because t he support went to a fellow group member. Essentially, the Department is inc luding inc ome from child support twice fo r this group: as part of unearned income for Claimant's mother and as part of Claimant's earned incom because s he is not eligible for the child support deduction. T his was not the intent behind the policy for including c hild support as unearned incom e for FAP budgeting. Because Claimant and her mother live to ogether and are considered part of the same group for FAP purpos es, the Department should not have included child support in the calculation of Claimant's unearned income as she is no t an absent parent. Claimant is not to be treated as an absent parent for F AP budgeting purposes because she liv es with the children. The money she pays her mother in support for the childre n is being put right back into the househol d. Therefore, the Departm ent improperly included child support as part of Claimant's gross unearned income.

Because of errors in the Department's calculation of Claimant's earned and unearned income discussed above, the Department did not act in accordance with Department policy when it denied Claimant's application for FAP benefits due to excess income.

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 not act in accordance with Department policy when it denied Claimant's application for FAP benefits due to excess income. Accordingly, the Department's decision is REVERSED.

THE DEPARTMENT IS ORDERED TO DO THE FOLLOWING WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

- 1. Reregister Claimant's February 13, 2013 application for FAP benefits;
- 2. Begin reprocessing the FAP application and recalculating the FAP budget for February 13, 2013 ongoing in accordance with Department policy and consistent with this Hearing Decision;
- 3. Begin the issuance of supplements for any FAP benefits that Claimant was entitled to receive but did not from February 13, 2013, ongoing; and

4. Notify Claimant of its decision in writing in accordance with Department policy.

Zainab Baydoun
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: April 11, 2013

Date Mailed: April 11, 2013

NOTICE: Michigan Administrative Hearing S ystem (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a par ty within 30 days of the mailing date of this Dec ision and Order. MAHS will not or der a rehearing or reconsideration on the Department's mo tion where the final decis ion 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 ti mely 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 <u>MAY</u> 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 affect the substantial rights of the claimant:
 - 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 at Michigan Administrative Hearings

Re consideration/Rehearing Request P. O. Box 30639

Lansing, Michigan 48909-07322

ZB/cl

cc: