

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201150810
Issue No.: 3003
Case No.: [REDACTED]
Hearing Date: September 28, 2011
Oakland County DHS (03)

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 September 28, 2011 from Detroit, Michigan. The claimant appeared and testified. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, appeared and testified.

ISSUE

The issue is whether DHS properly calculated Claimant's Food Assistance Program (FAP) benefit issuance for 9/2011.

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 received child support of \$457 in 4/2011 for each of her two children.
3. Claimant received biweekly gross employment income of \$600.
4. Claimant received a single pay for employment from 1/2011 for \$77.
5. On 8/15/11, DHS budgeted the single pay in determining Claimant's FAP benefit issuance beginning 9/2011.

6. On 8/22/11, Claimant requested a hearing to dispute the FAP benefit issuance effective 9/2011.

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 8/2011, 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/>.

Claimant originally contended that DHS stopped her FAP benefits. However, it was eventually agreed that DHS continued Claimant's FAP eligibility following the submission of verifications. As the stoppage of FAP benefits has been resolved, it will not be considered further.

Claimant also disputed the calculation of 9/2011 issued FAP benefits. Specifically, Claimant disputed how DHS determined her employment and unearned income amounts.

To prospect child support income, DHS is to use the average of child support payments received in the past three calendar months, unless changes are expected. BEM 505 at 3. In the present case, DHS used the period of 4/2011-6/2011. DHS added the total child support income received by Claimant from those three months (\$914) and divided the total by three to calculate a monthly average of \$304 (dropping cents). Claimant contended that she receives only erratic child support payments and that the \$304/month calculation is excessive.

Claimant's argument is relevant to the calculation of FAP benefits but not to the correctness of the DHS decision made concerning her 9/2011 FAP benefit eligibility. DHS would have no way to know whether a change occurred after the 4/2011 child support payments were issued unless Claimant reported the change to DHS. Claimant conceded that she did not specifically report any changes to DHS concerning her child support payments. Thus, DHS appropriately budgeted the 4/2011 child support payments as part of a three month average. As Claimant reported a change in her child

support at the administrative hearing, DHS should be expected to process the change in accordance with their regulations.

Claimant also raised an issue concerning her employment income calculation. It was not disputed that Claimant received \$600/two weeks in gross employment income. DHS converts biweekly non-child support income into a 30 day period by multiplying the income by 2.15. BEM 505 at 6. Multiplying Claimant's countable biweekly income by 2.15 results in a monthly countable income amount of \$1290.

DHS budgeted a monthly employment income of \$1367 for Claimant. DHS stated that Claimant received a \$77 check for employment performed in 1/2011. It was not disputed that the income was a one-time payment and not ongoing income. DHS contended that because the 1/2011 income was not timely reported and budgeted, DHS was entitled to budget the income when it was discovered months later. DHS regulations simply do not allow for DHS to budget income in the way DHS did. DHS may (or may not) be correct that Claimant received excess FAP benefits for 1/2011 due to the alleged failure by Claimant to report the income. In such a case, DHS is to follow their recoupment procedures which would require a recalculation of the 1/2011 FAP benefits. It is found that DHS erred in budgeting 1/2011 income in determining Claimant's 9/2011 FAP benefit eligibility.

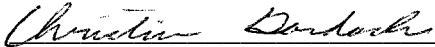
DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly calculated Claimant's child support income for purposes of 9/2011 FAP benefit eligibility. The actions taken by DHS are PARTIALLY AFFIRMED.

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS improperly calculated Claimant's employment income for purposes of 9/2011 FAP benefit eligibility. It is ordered that DHS:

- (1) recalculate Claimant's FAP benefit eligibility for 9/2011 by excluding any income from 1/2011 as part of the determination; and
- (2) supplement Claimant for any FAP benefits not received as a result of the DHS error.

The actions taken by DHS are REVERSED.


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

201150810/CG

Date Signed: October 4, 2011

Date Mailed: October 4, 2011

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:

