

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012 18890
Issue No.: 3003
Case No.: [REDACTED]
Hearing Date: January 11, 2012
County: Oakland County DHS (03)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claimant's request for a hearing. After due notice, a telephone hearing was held on January 11, 2012, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. Participants on behalf of Department of Human Services (Department) included [REDACTED], FIM and [REDACTED], ES.

ISSUE

Did the Department properly compute the Claimant's FAP benefit allotment?

FINDINGS OF FACT

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

1. The Claimant was an ongoing FAP recipient. On September 14, 2011 the Claimant filed a Verification of Employment advising the Department she had started a new job as a nanny and was to receive \$400 per month. Exhibit 1
2. The Department included \$800 per month for the Claimant's nanny employment income when calculating the Claimant's FAP benefits.
3. The Department has continued to include employment income from [REDACTED] y [REDACTED] as of the date of the hearing.
4. The Claimant received a Verification of Employment from the Department dated 11/29/11 which was completed by the Claimant's Employer on 12/2/11. The

verification indicated that the Claimant's employment income for her nanny job was reduced to \$50 per week, \$200 per month. Exhibit 6

5. The department verified this change by collateral contact with the employer on December 9, 2011. Exhibit 6
6. The Claimant also filed a Change Report on October 3, 2011 advising the Department that her job had changed. The Department did not receive this change document. Claimant Exhibit 1
7. The October 3, Change Report also advised that the Claimant's current job work hours had been reduced and her income was \$50 per week. Claimant Exhibit 1. The Department acknowledged this change December 9, 2011 when it verified the change. Exhibit 6
8. The Claimant's income was not changed to \$200 per month for her nanny job to acknowledge the reduction in hours.
9. The Claimant conceded that the amount included in her FAP budget for child support was correct.
10. On October 19, 2011 The Claimant filed her request for hearing protesting the calculation of her food assistance benefits.

CONCLUSIONS OF LAW

Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 42 USC 601, *et seq.* The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, R 400.3101 through R 400.3131. FIP replaced the Aid to Dependent Children (ADC) program effective October 1, 1996.

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 (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, R 400.3001 through R 400.3015.

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (formerly known as the Family Independence

Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105.

The Adult Medical Program (AMP) is established by 42 USC 1315, and is administered by the Department pursuant to MCL 400.10, *et seq.*

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, is established by 2004 PA 344. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.10, *et seq.*, and 2000 ACS, R 400.3151 through R 400.3180.

The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, the Child Care and Development Block Grant of 1990, and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The program is implemented by Title 45 of the Code of Federal Regulations, Parts 98 and 99. The Department provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001 through R 400.5015.

Additionally, based upon a review of the documents the Department presented at the hearing, there is no basis for the earned income amount used by the Department when computing the income the Claimant received from the Claimant's nanny job. The Department's records (which it produced) were not date stamped, making it impossible to determine when the Department had notice of changes in employment. Exhibit 1 produced by the Department from its files indicates that the Claimant's employer for her nanny job clearly reported on the verification \$400 per month in income based upon the note that she was paid \$200 every other week. The Department instead erroneously used \$800 per month when calculating the Claimant's FAP benefits and continued to use the wrong amount through the date of the hearing. Because the Department did not date stamp the document, I find that the Claimant's credible testimony that she filed the verification on September 14, 2011 establishes the date the Department received the information.

Based on the information provided, the Department should have recalculated the Claimant's FAP budget to include the income from the Claimant's nanny job as \$400 per month and processed the change in accordance with BEM 505 increase in income provisions. Based upon these findings and conclusions the Department must recompute the Claimant's FAP budget accordingly. BEM 505, page 9. For income increases that result in a benefit decrease, action must be taken and notice issued to the client within the standard of promptness, (FAP: 10 calendar days). The effective month is the first full month that begins after the negative action effective date.

The Department also did not substantiate by evidence it presented that it sent the Claimant or Wesley Berry Florist, her former employer, a request for verification of employment ending. The Department did send a verification of employment dated 11/29/11 which the Claimant received. When the Claimant received this Verification of

Employment Form dated 11/29/11, she had it completed by her nanny employer to reflect a reduction in income due to fewer hours. The employer completed the form December 2, 2012. This document does not indicate that it was sent to verify employment ending. This document is also not date stamped by the Department. Although not date stamped, on December 9, 2011, the Department was advised that the employment hours were reduced and subsequently called the employer and confirmed the amount of \$100 received bi weekly, (\$200 per month). Exhibit 6 Based on the evidence presented, the Department must recalculate the Claimant's FAP benefits based on the reduction in income as of December 2, 2011. BEM 505, page 8 and 9 provides that Income decreases that result in a benefit increase must be effective no later than the first allotment issued 10 days after the date the change was reported, provided necessary verification was returned by the due date.

Lastly, it is found that the Department never requested of the Claimant, or her former employer, Wesley Berry, verification of employment ending. The Department did not produce a form that would support that a verification was sent to [REDACTED] to verify the ending of the Claimant's employment nor did the Department attempt to verify the employment ending by collateral contact. Based on the evidence presented it is found the Department never sought verification of employment ending from the Claimant or her former employer. Clearly the Department had notice of this information on November 1, 2011 when the Claimant filed her hearing request. The Claimant also testified that she provided the information to the Department in a Change Report dated October 3, 2011, which the Department did not receive. However, because the Department did not substantiate that it sought verification of employment ending, it is determined that the Department must seek further verification of the ending of this employment. Once verified, it shall calculate the change (reduction) of employment income as of November 1, 2011.

The FAP budgets submitted as evidence by the Department indicate net earned income or \$871. This amount was not substantiated by the Department or by the evidence presented by the Department and therefore the Department did not meet its burden of proof. Based upon the verifications provided, the Department incorrectly calculated the Claimant's FAP benefits with regard to earned 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 act properly when . did not act properly when it calculated the Claimant's FAP benefits.

Accordingly, the Department's AMP FIP FAP MA SDA CDC decision is AFFIRMED REVERSED for the reasons stated on the record.

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

1. The Department is ordered to initiate recalculation of the Claimant's FAP benefits for the first budget where it included the \$800 in income from the Claimant's employment from her nanny job and shall use earned income from that job of \$400 per month in accordance with department policy.
2. The Department shall also initiate recalculation of the Claimant's FAP budget, as of December 2, 2011, and shall include \$200 per month for the Claimant's earned income from her nanny job.
3. The Department shall initiate further verification of the ending of the Claimant's employment with Wesley Berry Florists and shall mail an verification of ending of employment to both the Claimant and Wesley Berry and assist the Claimant in obtaining the verification by collateral contact by calling the employer directly. Upon confirmation that the employment is ended, the Department shall remove the income attributed to this employer from the FAP benefit calculation effective November 1, 2011 and recalculate the benefits accordingly.
4. The Claimant shall be issued a supplement for any FAP benefits she was otherwise entitled to receive in accordance with Department policy.



Lynn M. Ferris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: January 19, 2012

Date Mailed: January 19, 2012

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 at

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

LMF/hw

cc:

