

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-50464
Issue No.: 3026
Case No.: [REDACTED]
Hearing Date: June 5, 2012
County: Oakland 03

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

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 June 5, 2012, from Lansing, Michigan. Claimant personally appeared and provided testimony. Participants on behalf of Department of Human Services (Department) included [REDACTED] (Assistance Payments Supervisor).

ISSUE

Did the Department properly declare that Claimant was not self-employed when it calculated and budgeted Claimant's Food Assistance Program (FAP) benefits?

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 actively receiving FAP benefits with a monthly allotment of [REDACTED].
2. Claimant, at all times, had a group size of 3 (three).
3. On April 4, 2012, Claimant applied for Medical Assistance (MA).
4. At all relevant times, Claimant worked as a real estate agent.
5. Claimant is not paid directly by her clients, but she is paid on a commission basis with all checks issued from [REDACTED], a real estate company.
6. Claimant works from her home and also works from an office located in the [REDACTED].

7. The Department processed Claimant's Medicaid application and used the information contained in the application toward her FAP case.
8. On or about April 5, 2012, the Department mailed Claimant a Notice of Case Action (DHS-1605) which reduced Claimant's monthly FAP allotment from [REDACTED] [REDACTED].
9. Claimant requested a hearing to challenge the FAP reduction on April 30, 2012.

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 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.

For FAP purposes, all earned and unearned income available to a client is countable. BEM 500. Earned income means income received from another person or organization or from self-employment for duties that were performed for compensation or profit. BEM 500. The department determines a client's eligibility for program benefits based on the client's actual income and/or prospective income. BEM 505. Actual income is income that was already received. BEM 505. Prospective income is income not yet received but expected. BEM 505. Prospective budgeting is the best estimate of the client's future income. BEM 505.

Here, Claimant challenges the Department's decision to reduce her FAP. Specifically, Claimant disputes the Department's finding that her income as a real estate agent was from employment rather than from self-employment. As a result of this determination, the Department does not consider Claimant's self-employment expenses during the FAP budgeting process. Claimant contends that the Department erred because she is self-employed. Thus, the salient question in this matter is whether Claimant should be considered employed or self-employed for purposes of FAP.

BEM 502 identifies the following: (1) guidelines for determining if an individual's income is considered to be from employment or self-employment; (2) allowable expenses of producing self-employment income; and (3) Self-Employment income types.

For all types of assistance, BEM 502 provides that an individual who runs their own business is self-employed. This includes but is not limited to selling goods, farming, providing direct services, and operating a facility that provides services such as adult foster care home or room and board. BEM 502.

BEM 502 recognizes that sometimes determining if an individual's income should be considered earned income or self-employment may be difficult. The Department employee

is instructed to make a determination based on available information and he/she must document the rationale for the decision. BEM 502. To help make that determination BEM 502 directs the Department employee to consider the following guidelines as indicators of self-employment:

- The individual sets own work hours.
- The individual provides own tools used on the job.
- The individual is responsible for the service being provided and for the methods used to provide the service.
- The individual collects payment for the services provided from the individual paying for them.

A client need not meet all of the above to be considered self-employed. BEM 502. In making the determination, the policy prohibits the Department from considering the following:

- Withholding of income tax from payment made to individual.
- Whether or not the individual files income tax.
- Whether or not individual receives a federal form 1099. BEM 502.

To assist in the determination of employment versus self-employment logical unit of work (LUW), BEM 502 (at page 2) provides the following four examples:

Example 1: Joe has a contract with the local hospital to provide snow removal services. He drives his own snow removal vehicle and pays for his own gas. The hospital pays him directly based on the number of times his services are used. Joe is self-employed.

Example 2: Jane is a hair dresser at a salon. The salon supplies all the products she uses on the job. Jane's clients pay the salon for the services Jane provides. Jane receives a paycheck from the salon each week for 50 percent of the income from her clients. For income budgeting purposes, Jane is an employee of the salon and her income should be entered in the earned income LUW; not the self-employment LUW.

Example 3: Rich provides home help care for his elderly neighbor, Sam. Sam receives assistance through DHS' Independent Living Services (Adult Home Help) program to pay for Rich's services. Rich is an employee of Sam and his income should be entered in the earned income LUW; not the self employment LUW.

Example 4: Mary Jo is a massage therapist at a local chiropractor's office. She uses a room in the office and uses their table. She provides her own oils and linens used for the massages and set her own hours. She collects payment directly from the clients and pays the chiropractor's office \$10 for each massage provided. Mary Jo is self-employed.

None of the four examples above neatly fit with the facts in the instant matter. Here, the Department's rationale for finding that Claimant was not self-employed was based solely on the fact that Claimant is not paid directly by her clients following a sale but is

paid by ██████████ the real estate company. The Department did not provide any additional reasons for this decision. In response, Claimant points to Michigan Compiled Laws (MCL §339.2510), which indicates, “[a] real estate salesperson shall not accept from a person other than the real estate salesperson’s broker a commission or valuable consideration for the performance of an act specified in this article.”

The record in this matter demonstrates that Claimant is not an employee of ██████████ ██████████. Even the Front End Eligibility (FEE) investigation conducted by the Office of Inspector General (OIG) dated April 4, 2012, did not conflict with Claimant’s testimony. The OIG FEE report noted the following, “The subject is a self-employed realtor at ██████████ and is responsible for all expenses, including desk fees. When she does sell a home a check is made to ██████████ makes a check out to her. This is common practice with real estate offices.”

In addition, Claimant testified during the hearing that she sets her own work schedule. Claimant stated that she provides her own computer and equipment. She also testified that she uses her own yard signs and is responsible for her own advertising. Under BEM 502, Claimant is responsible for the service being provided (real estate sales) and she is also responsible for the methods used to provide the service. ██████████ does not direct her activities and does not provide any oversight. The Department did not provide any evidence to contradict Claimant’s statements.

Accordingly, this Administrative Law Judge finds that based on this record Claimant is self-employed as defined by BEM 502.

DECISION AND ORDER

Based upon the above Findings of Fact and Conclusions of Law, the Administrative Law Judge finds that that the Department did not act properly when it determined that Claimant was not self-employed when calculating and budgeting Claimant’s Food Assistance Program (FAP) benefits.

Accordingly, the Department’s FAP is REVERSED for the reasons stated above.

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

1. The Department shall recalculate Claimant’s FAP and enter her income in the self-employment LUW.
2. Pursuant to BEM 502, the Department shall include any and all allowable self-employment expenses.

To the extent required by policy, the Department shall issue any retroactive or supplemental benefits that Claimant is otherwise eligible to receive.

IT IS SO ORDERED.

/s/

C. Adam Purnell
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 6/12/12

Date Mailed: 6/12/12

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

CAP/ds

