

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 2012 68235  
Issue No.: 3003, 3026  
Case No.: [REDACTED]  
Hearing Date: October 2, 2012  
County: Oakland County DHS(02)

**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, an in-person hearing was held on October 2, 2012, from Madison Heights, Michigan. Participants on behalf of Claimant included the Claimant and [REDACTED], his spouse, who appeared as a witness. Participants on behalf of the Department of Human Services (Department) included [REDACTED], ES.

**ISSUE**

Due to excess income, did the Department properly  deny the Claimant's application  close Claimant's case  reduce Claimant's benefits for:

- |  |   |
|--|---|
| <input type="checkbox"/> Family Independence Program (FIP)?        | <input type="checkbox"/> Adult Medical Assistance (AMP)?    |
| <input checked="" type="checkbox"/> Food Assistance Program (FAP)? | <input type="checkbox"/> State Disability Assistance (SDA)? |
| <input type="checkbox"/> Medical Assistance (MA)?                  | <input type="checkbox"/> Child Development and Care (CDC)?  |

**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  applied for benefits for:  received benefits for:

- |  |   |
|--|---|
| <input type="checkbox"/> Family Independence Program (FIP).        | <input type="checkbox"/> Adult Medical Assistance (AMP).    |
| <input checked="" type="checkbox"/> Food Assistance Program (FAP). | <input type="checkbox"/> State Disability Assistance (SDA). |
| <input type="checkbox"/> Medical Assistance (MA).                  | <input type="checkbox"/> Child Development and Care (CDC).  |

2. On 8/1/12, the Department  denied Claimant's application  
 closed Claimant's case  reduced Claimant's benefits  
due to excess income (increase).
3. On 7/25/12, the Department sent  
 Claimant  Claimant's Authorized Representative (AR)  
notice of the  denial.  closure.  reduction.
4. On July 28, 2012, Claimant or Claimant's AHR filed a hearing request, protesting the  
 denial of the application.  closure of the case.  reduction of 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 Adult Medical Program (AMP) is established by 42 USC 1315, and is administered by the Department pursuant to MCL 400.10, *et seq.*

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 1999 AC, Rule 400.3101 through Rule 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 1999 AC, Rule 400.3001 through Rule 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 (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105.

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, is established by 2004 PA 344. The Department (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.10, *et seq.*, and 2000 AACS, Rule 400.3151 through Rule 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 1999 AC, Rule 400.5001 through Rule 400.5015.

Additionally, this matter involves a review of the accuracy of the Department's determination of self-employment income attributed to the Claimant when it calculated the Claimant's FAP benefits. The Claimant's FAP group consists of 4 members. In response to the Department's request at the redetermination, the Claimants presented forms requested by the Department to establish and verify their income and expenses from self employment. The Claimants submitted Self-Employment Income and Expense Statements (DHS 431), for March, April and May 2012. The Claimants provided forms for each of their two businesses. One of the Claimant's businesses, [REDACTED], is a pool and spa servicing business; the business is seasonal, generally active from May or June through October. The other business, [REDACTED] provides accounting services.

The first consideration to be addressed is whether the Claimants are self-employed. Self-employment is defined by Department policy as:

An individual who runs his/her 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. Department of Human Services Bridges Eligibility Manual (BEM) 502, pp1 (2012).

It is sometimes difficult to determine if an individual's income should be entered in the earned income or self-employment LUW. Make a determination based on available information and document your rationale. Use the following guidelines to help make that determination; consider the following to be 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.

Do not consider the following in making the determination:

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, pp 2

Based upon the policy referenced above, it is determined that the Claimant and his spouse are self-employed in the operation of their businesses, as several of the criteria fit the circumstances of their businesses, including the criteria such as work hours, and responsibility for services provided and methods used to provide the services.

As regards the Department's determination of the self-employment income and expense, and based upon a thorough review of the evidence available to the Department at the time it determined the self employment income, the Department did not have the proper information available to it to determine the Claimant's actual income from their two businesses. The profit and loss information used by the Department was based upon the profit and loss information for the businesses. The information is informative with regard to whether their business was making or losing money. It is not useful to determine the personal income for the Claimant's. The determination of FAP benefits requires that the Department determine the actual income received by the individuals applying for benefits. BEM 500 The Department determined that the Claimant's income from self-employment for purposes of computing FAP benefits was \$2240. Exhibit 4.

After a thorough review of the evidence presented at the hearing, it cannot be determined how the Department determined the amount of self employment income used to calculate FAP benefits. Accordingly, the Department did not sustain its burden of proof as regards the determination of income received by the Claimants.

While the Department had adequate information to determine business expenses, which included the Self-Employment Income and Expense Statements, actual expense receipts and business bank account information, these business expenses are not personal expenses to the Claimant's and thus cannot be used to reduce their personal income. While the business expense information is informative in determining business expense, and business profit and loss, they are not in and of themselves determinative of the Claimants personal (actual) income received by them as employees of the businesses, or income based upon distributions to the Claimants by the S corporations.

In conclusion, the Department did not have sufficient information to determine the actual income received by the Claimants individually. The income received by the two LLC S Corporations (the businesses), is not income received by the Claimants as individuals. The only evidence presented by the Claimants at the hearing that could be used to substantiate their individual income was copies of several checks paid by the accounting business for June and July 2012, totaling \$3,600. Claimant Exhibits 3 and 4. No payments to Claimant's by [REDACTED] were presented at the hearing.

At the hearing, the Claimants also provided copies of the 2011 Form 1120S, Business Tax Returns which were filed by the businesses as S corporations. Claimant Exhibits 1 and 2. The returns show that both the businesses lost money, i.e. were not profitable in 2011. However, the business returns are not evidence of income paid to the Claimants. Without the benefit of W-2 wage information for each of the Claimants and their personal income tax returns, the business returns are not useful in determining income of the Claimants.

In conclusion, it should be noted that at the hearing the Claimant credibly testified that the Terrapin Pool and Spa business is seasonal and income from the business stops after the pool season ends. Therefore, Claimants should provide the Department notification of this change in income, should same occur, so that Claimant's ongoing FAP benefits can be recalculated to reflect such change. Department of Human Service Bridges Eligibility Manual (BEM) 505, (2012).

Based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, the Administrative Law Judge concludes that, due to excess income, the Department  properly  improperly

- denied Claimant's application
- reduced Claimant's benefits
- closed Claimant's case

for:  AMP  FIP  FAP  MA  SDA  CDC.


### **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  did not act properly.

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 shall initiate recalculation of the Claimant's FAP benefits for August 1, 2012, and shall use the best available information for the months of March, April and May 2012 based upon proof of actual income or distributions received by the Claimants from the operation of their two businesses (Terrapin Pool and the accounting service business).
2. The Department shall issue a FAP supplement, if any, to the Claimants that the Claimants are otherwise eligible to receive in accordance with Department Policy.

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

Date Signed: 10/10/2012

Date Mailed: 10/10/2012

**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:

