

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201259550
Issue No.: 3002
Case No.: [REDACTED]
Hearing Date: July 19, 2012
County: Wayne DHS (19)

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 following Claimant's request for a hearing. After due notice, a telephone hearing was held on July 19, 2012 from Detroit, Michigan. Participants included the above named claimant. Participants on behalf of Department of Human Services (DHS) included [REDACTED], Manager, and [REDACTED], Specialist.

ISSUE

The issue is whether DHS properly denied Claimant's Food Assistance Program (FAP) benefit eligibility based on an alleged failure to verify stopped employment.

FINDINGS OF FACT

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

1. On 4/12/12, Claimant applied for FAP benefits.
2. Claimant's application was approved for expedited FAP benefits for 4/2012 only.
3. On an unspecified date, DHS discovered that Claimant received employment wages exceeding \$5,000 from a restaurant in the first quarter of 2012.
4. The restaurant employment was not noted on the application as neither current employment nor employment which resulted in income to Claimant in the 30 days prior to the application date.

5. DHS mailed Claimant a Verification Checklist requesting verification of Claimant's stopped employment with the restaurant.
6. DHS did not receive written verification of Claimant's restaurant employment income stoppage.
7. On 6/14/12, DHS denied Claimant's FAP benefit eligibility for 5/2012 due to Claimant's failure to verify stopped employment income with the restaurant.
8. On 6/18/12, Claimant requested a hearing to dispute the denial of FAP benefit eligibility effective 5/2012.

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.

The present case involved a dispute of an application denial due to an alleged failure by Claimant to verify stopped employment income. The first issue to determine is whether DHS had a basis to request verification of stopped employment income.

For FAP benefits, DHS is to verify income at application and at redetermination. BEM 505 at 11. DHS is to verify income that stopped within the 30 days prior to the application date or while the application is pending before certifying the group. *Id.*

While Claimant's FAP benefit application was pending, DHS discovered that Claimant received over \$5,000 in gross employment wages from a restaurant in the first quarter of 2012. Verified receipt of income from 1/2012-3/2012 is not definitive proof that Claimant had income in the 30 days prior to Claimant's application date of 4/12/12. However, the DHS suspicion of income in the 30 days prior to 4/12/12 is not meritless. The evidence was somewhat persuasive that the request for verification of stopped income was justified.

Claimant stated that she stopped employment with a restaurant on 3/10/12. Claimant also testified that she received her tips from the employment on the same working day. Claimant conceded that she also received an hourly wage. Claimant contended that her last day of work was the last time that she received money from the restaurant. However, Claimant conceded that she had a pay date for her gross hourly wages within

the 30 days prior to her application date but that she received none of the wages because the hourly wages were offset by her tax obligation.

DHS is to count the gross employment income amount. BEM 501 at 5. Claimant's concession that she received gross employment income in the 30 days prior to her application is persuasive evidence that Claimant received income (albeit gross income) in the 30 days prior to her application date. It is found that the request for verification of Claimant's stopped employment income was proper.

DHS stated that no verification of Claimant's stopped restaurant employment was ever received. Claimant state she made efforts to obtain the verification but could not provide first-hand evidence that a verification of stopped employment was submitted. Thus, the evidence established that DHS did not receive a verification of stopped employment. Despite the above findings, there is more to consider in determining whether DHS properly terminated Claimant's FAP benefit eligibility.

The client must obtain required verification, but DHS must assist if they need and request help. BAM 130 at 3. Claimant contended that DHS should have attempted to call her former employer to try and obtain verification. It was not disputed that Claimant asked her specialist on 5/9/12 to call her former employer concerning her employment status. It was not disputed that DHS declined Claimant's request. The problem with Claimant's request to DHS is that it was made prior to any efforts from Claimant. Clients should be expected to make some effort in obtaining written verification before placing the burden on DHS to request verification. Traditionally, third parties are not willing to provide information to outside persons due to confidentiality reasons. On the other hand, DHS never bothered to find out if the verification could be obtained by a simple phone call to Claimant's employer. Overall, Claimant's 5/9/12 request to DHS to call her former employer was mildly persuasive in establishing that DHS failed in an obligation to assist her.

Overall, the evidence established Claimant to be an informed and detail-oriented client. It was not disputed that Claimant timely submitted all other required documents to DHS. It was not disputed that Claimant remained in regular communication with her specialist throughout the application process. Claimant even brought phone records to the hearing verifying a phone call made to her specialist on 6/11/12 (among others) after FAP benefits were not received. Claimant testified that she was unable to contact her specialist concerning her absence of FAP benefits. The evidence suggested that Claimant either did or would have reported that she had made all reasonable efforts in verifying her stopped employment.

If neither the client nor DHS can obtain verification despite a reasonable effort, DHS is to use the best available information. *Id.* If no evidence is available, DHS is to use best judgment. *Id.*

Claimant testified that by 6/11/12, she attempted to have a Verification of Employment completed at her former employer's location but was told that the document had to be

faxed to the national headquarters. Claimant stated that she faxed the document to corporate headquarters and was told that the document would be faxed directly to DHS. Claimant's verified phone call from 6/11/12 tended to establish that DHS knew of Claimant's difficulties in obtaining the requested verification. This evidence was somewhat persuasive in establishing that DHS should have used the best available information to determine whether Claimant's restaurant employment income stopped as the verification was not obtained despite Claimant's reasonable efforts.

Though the evidence was not directly on point to determining any of the issues, it was verified at the hearing that Claimant had no employment income from the restaurant in the second quarter of 2012. This information is relevant because it bolsters Claimant's credibility by verifying that her income stopped when Claimant said it did. Also, it verifies what was previously unverified, although technically, it does not necessarily alter the correctness of the DHS decision because the information was presumably not available until 7/2012, long after DHS had to process Claimant's eligibility.

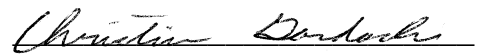
Based on the presented evidence, it was sufficiently established that Claimant made reasonable efforts to obtain verification of stopped income and that DHS should have made a FAP benefit decision based on the best available information. Accordingly, the DHS denial of FAP benefits is reversed.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS improperly denied Claimant's application for FAP benefits. It is ordered that DHS:

- (1) reinstate Claimant's FAP application from 4/16/12;
- (2) process Claimant's FAP benefit eligibility from 5/2012 subject to the finding that Claimant made reasonable efforts in verifying stopped income with her former restaurant employer; and
- (3) supplement Claimant for any FAP benefits not received as a result of the improper denial.

The actions taken by DHS are REVERSED.


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

Date Signed: July 27, 2012

Date Mailed: July 27, 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 to:

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

CG/hw

cc:

