

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201321162
Issue No.: 3008
Case No.: [REDACTED]
Hearing Date: February 7, 2013
County: Wayne (35)

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 February 7, 2013, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Eligibility Specialist.

ISSUE

Did the Department properly close Claimant's Food Assistance Program (FAP) case on the basis that Claimant failed to provide requested verifications and her net income exceeded the FAP net income limit?

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 recipient of FAP benefits.
2. In connection with an application for State Emergency Relief (SER) assistance, Claimant indicated that her husband was employed.
3. On October 29, 2012, the Department sent Claimant a Verification Checklist (VCL) seeking verification of employment for the husband by November 8, 2012 in the form of last 30 days of paystubs, an employer statement, or a Verification of Employment (DHS-38) form completed by the employer.

4. Claimant did not provide any additional documentation.
5. On November 1, 2012, the Department sent Claimant a Semi-Annual Contact Report regarding her FAP case.
6. On November 30, 2012, Claimant timely submitted the completed Semi-Annual Report and included two paystubs.
7. On December 22, 2012, the Department sent Claimant a Notice of Case Action notifying her that her FAP case would close effective January 1, 2013, because she had failed to provide requested information and because her net income exceeded the FAP net income limit for her group size.
8. On January 7, 2013, Claimant filed a hearing request disputing the Department's actions.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), Department of Human Services Reference Tables Manual (RFT), and Department of Human Services State Emergency Relief Manual (ERM).

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 Mich Admin Code, 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.

The State Emergency Relief (SER) program is established by 2004 PA 344. The SER program is administered pursuant to MCL 400.10, *et seq.*, and by Mich Admin Code, R 400.7001 through R 400.7049. Department policies are found in the.

In an October 23, 2012 SER application, Claimant indicated that her husband was employed and paid \$450 weekly. Because this information had not been previously reported to the Department, on October 29, 2012, the Department sent Claimant a Verification Checklist (VCL) requesting verification of the husband's wages by November 8, 2012, in the form of the last 30 days check stubs, an employer statement or a Verification of Employment (DHS-38) completed by the employer. Claimant did not provide any documentation in response to the VCL but testified that she informed the Department by phone that her husband did not work consistently every week.

On November 30, 2012, Claimant submitted a completed Semi-Annual Contact Report that had been sent to her on November 1, 2012, and included two paychecks with the Report. The Department testified that, because Claimant had previously indicated in the SER that her husband was paid weekly, the two paystubs she submitted with the Report were insufficient to establish the 30 days' income. However, the Department worker also testified that Claimant contacted her when she submitted the Semi-Annual and informed her that her husband did not work consistently, that he only got paid for the weeks he worked, and, consequently, she did not have weekly pay checks for him. The Department worker further testified that she had previously sent the husband's employer a DHS-38, but the employer had not responded.

The Department may not deny or terminate assistance because an employer or other source refuses to verify income. BEM 501 (December 1, 2011), p 7. If neither the client nor the Department can obtain verification despite a reasonable effort, the Department must use the best available information, and, if no evidence is available, its best judgment. BAM 130 (May 1, 2012), p 3. Based on the circumstances in this case, where the Department attempted to get the employer to complete a DHS-38 but the employer did not respond and where Claimant notified the Department that her husband was not paid weekly and that she provided the paychecks for the weeks he worked, the Department was required to use the best information available to process Claimant's

FAP case. Thus, the Department did not act in accordance with Department policy when it closed Claimant's FAP case for failure to provide requested verification.

At the hearing, the Department testified that, contrary to the terms of the December 27, 2012 Notice of Case Action, Claimant's case actually closed on November 8, 2012, when Claimant failed to respond to the VCL, and both Claimant and the Department verified that Claimant did not receive her December 2012 FAP allotment. Because the Department is required to provide timely notice of the closure of a FAP case under the circumstances in this case, the Department did not act in accordance with Department policy when it closed Claimant's FAP case prior to notifying her of the action. BAM 220 (November 1, 2012), pp 1-4. Furthermore, the Department cannot rely on Claimant's failure to respond to the VCL as the basis for closing Claimant's case where the Department acknowledged that it became aware of the husband's employment situation and the reason only two paystubs were provided when it received the Semi-Annual Contact Report. The Department received the Semi-Annual Contact Report on November 30, 2012, before the December 27, 2012 Notice of Case Action was sent and before the January 1, 2013, effective date of case closure provided in the Notice of Case Action. Therefore, the Department should have considered these circumstances rather than relying on the October 29, 2012 VCL to close Claimant's FAP case. See BAM 220, p 10.

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 closed Claimant's FAP case.

Accordingly, the Department's decision is AFFIRMED REVERSED for the reasons stated on the record and above.

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

1. Reinstate Claimant's FAP case effective December 1, 2012, and supplement for lost benefits that Claimant was otherwise eligible and qualified to receive from December 1, 2012, ongoing;
2. Begin reprocessing Claimant's FAP Semi-Annual Contact Report in accordance with Department policy and consistent with this Hearing Decision; and
3. Notify Claimant in writing of its decision in accordance with Department policy.



Alice C. Elkin
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 2/13/13

Date Mailed: 2/13/13

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

ACE/hw

cc:

