

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-22468
Issue No.: 3026
Case No.: [REDACTED]
Hearing Date: February 14, 2013
County: Oakland (02)

ADMINISTRATIVE LAW JUDGE: Jan Leventer

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 14, 2013, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED] Eligibility Specialist.

ISSUE

Did the Department properly deny Claimant's application close Claimant's case 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 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 February 2, 2013, the Department
 denied Claimant's application closed Claimant's case
due to a determination that her husband's income was income that was not from
self-employment.
3. On December 21, 2012, the Department sent
 Claimant Claimant's Authorized Representative (AR)
notice of the denial. closure.
4. On December 21, Claimant made a verbal hearing request, protesting the
 denial of the application. closure of the case.

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 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.

Additionally, the following findings of fact and conclusions of law are entered in this case. Bridges Eligibility Manual 502, "Income From Self-Employment," contains Department policy regarding self-employment. The worker can be involved in providing direct services and be deemed self-employed. Then, in order for a customer's employment to be considered self-employment, the Department must determine if there are indicators of self-employment present. Department of Human Services Bridges Eligibility Manual (BEM) 502 (2012), pp. 1-2.

Applying BEM 502 to this case, first it is found and determined that Claimant provides a direct service to another company. The direct service provided in this case is over-the-road trucking service. Direct services are included in the definition of work that can be self-employment. Direct services can include child care, snow removal services, and massage therapy. *Id.*, p. 1.

Next, as it is found that Claimant is engaged in self-employment, the factfinder must consider whether there are any indicators of self-employment present. There are four guidelines set forth in BEM 502: does the individual set their own work hours, do they provide their own tools used on the job, are they responsible for the service provided and the methods used to provide it, and, does the individual collect the payment for services rendered. These four indicators are guidelines and not requirements; not all four must be present, and, if other available information contains indicators of self-employment, those indicators also must be considered. The Department must use all of the available information and document its rationale in determining self-employment. *Id.*, p. 2.

It is found and determined that in this case the Department failed to document its rationale for deciding that Claimant's husband was not self-employed. The Notice of Case Action does not address this question at all. At the hearing the Claimant testified that her husband sets his own hours of work, he provides the truck, and he is responsible for providing the trucking service and the methods of providing it. He also collects payment for the services from the individual who pays for the services. These are in fact four of the four guidelines the Department must consider. The Claimant at the hearing also presented numerous gas receipts for gasoline which her husband purchased, and these receipts are additional indicators and information about self-employment that the Department failed to consider.

Accordingly, it is found and determined that based on the all of the evidence presented at the hearing as a whole, the Claimant's husband is self-employed. It is found and determined that Claimant's husband is engaged in a direct service, over-the-road trucking. It is further found that there are several reliable indicators of self-employment: he sets his own work hours, he provides the truck, he is responsible for the service provided and the method used to provide it, he collects payment for the services, and he has necessary expenses incurred in providing the service. The Department shall be reversed.

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 the Department

properly denied Claimant's application improperly denied Claimant's application
 properly closed Claimant's case improperly 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 INITIATE THE FOLLOWING ACTIONS WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Remove the negative action in question and recalculate Claimant's FAP benefits retroactive to the date of the initial negative action in this case, i.e., October 11, 2012, using all income evidence provided by Claimant as per Department policy.



Jan Leventer
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: February 15, 2013

Date Mailed: February 15, 2013

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.

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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

JL/tm

cc:

