

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201345492
Issue No.: 2026; 3002
Case No.: [REDACTED]
Hearing Date: June 3, 2013
County: Wayne (18)

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 June 3, 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, and [REDACTED] Assistance Payment Supervisor.

ISSUE

Did the Department properly provide Claimant with MA coverage with a monthly \$307 deductible?

Did the Department properly calculate 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 an ongoing recipient of MA and FAP benefits.
2. In connection with an MA redetermination, the Department sent Claimant an April 4, 2013 Notice of Case Action notifying her that, effective May 1, 2013, she was eligible for MA coverage with a monthly \$307 deductible and monthly FAP benefits of \$392.
3. On May 2, 2013, Claimant filed a hearing request disputing the Department's action.

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), and Department of Human Services 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 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.

Additionally, in connection with processing Claimant's MA redetermination, the Department recalculated Claimant's FAP budget and MA eligibility. In an April 4, 2013, Notice of Case Action, the Department notified Claimant that she was eligible for MA coverage with a monthly \$307 deductible and monthly FAP benefits of \$392. Claimant disputed the Department's calculation of the monthly MA deductible and FAP benefits.

Calculation of MA Deductible

Clients are eligible for Group 2 MA coverage when net income (countable income minus allowable income deductions) does not exceed applicable Group 2 MA protected income levels (PIL) based on the client's shelter area and fiscal group size. BEM 135 (January 1, 2011), p 2; BEM 544 (August 1, 2008), p 1; RFT 240 (July 1, 2007), p 1. In this case, the monthly PIL for an MA group of two (Claimant and her husband) living in Wayne County is \$500 per month. RFT 200 (July 1, 2007), p 1; RFT 240, p 1.

An individual whose income is in excess of the applicable monthly PIL may become eligible for MA assistance under the deductible program, with the deductible equal to the amount that the individual's monthly income exceeds the applicable PIL. BEM 545 (July 1, 2011), p 2. Thus, if Claimant's net monthly income exceeds \$500, she is eligible for MA coverage with a monthly deductible equal to the amount that her monthly net income exceeds \$500.

When preparing an MA budget, the Department must prospect income for a future month, using the expected hourly wage and hours to be worked, as well as the payday schedule, to estimate earnings for fluctuating earned income. BEM 530 (October 2012), p 3. The MA budget also takes into consideration unearned income received by the

client's household. See BEM 536 (January 2010), p 2. While the Department provided an MA budget during the hearing showing the calculation of the MA deductible, it was unable to testify regarding the income it used as the basis for calculating Claimant's net income. It is noted that the income budgeting policy for MA is different than that for FAP, making the earned and unearned income reflected on the April 4, 2013, Notice of Case Action inappropriate for establishing the MA income for calculation of the MA budget. Compare BEM 530 and BEM 505 (October 2010). Because the Department was unable to identify the amount of earned and unearned income used in the MA calculation, the Department did not satisfy its burden of showing that it acted in accordance with Department policy when it calculated Claimant's monthly MA deductible. Furthermore, the MA budget did not exclude the cost of Claimant's husband's vision and dental premiums, which are identified expenses on the paystubs submitted to the Department, from the calculation of the deductible, as provided in policy. See BEM 544 (August 2008), pp 1, 8; BEM 211 (November 2012), p 5. In this respect, the Department did not act in accordance with Department policy in calculating Claimant's MA deductible.

Calculation of FAP Benefit

At the hearing, Claimant disputed the Department's calculation of her monthly FAP benefits of \$392. Because the Department did not provide a FAP budget for review, the figures shown on the April 4, 2013, Notice of Case Action were reviewed at the hearing. During the hearing, the issue became the Department's calculation of Claimant's household's earned and unearned income.

In calculating a client's earned income, the Department must determine a best estimate of income expected to be received by the client during a specific month. BEM 505 (October 2010), p 2. The Notice showed that Claimant's household had earned income for FAP purposes of \$1410. The Department testified that, in recalculating Claimant's earned income for the FAP budget it relied on the following paystubs from Claimant's husband's employment: (i) \$401.50 for check dated March 5, 2013; (ii) \$295.98 for check dated March 12, 2013; (iii) \$275.01 for check dated March 26, 2013; and (iv) \$293.86 for check dated April 2, 2013. The Department also testified that it considered \$370.72 for check dated March 19, 2013, which was not submitted but calculated based on the provided paystubs. However, a review of the Department's calculation reveals that the Department miscalculated the amount of the missing paystub, which should have been \$451.44. Thus, the Department's calculation of Claimant's gross income, based on the paystubs provided, is incorrect.

However, while the Department is required to use income from the past thirty days in prospecting income if it appears to accurately reflect what is expected to be received in the benefit month, discarding any pay if it is unusual and does not reflect the normal, expected pay amounts, if income received in the past 30 days is *not* a good indicator of future income, and the fluctuations of income during the past 60 or 90 days appear to accurately reflect the income that is expected to be received in the benefit month, the Department must use income from the past 60 or 90 days for fluctuating or irregular

income. BEM 505, pp 4-5. Whenever possible, the Department is required to seek input from the client to establish an estimate. BEM 505, p 2.

In this case, Claimant's husband's gross weekly income for the provided weeks shows significant fluctuations, from a low of \$275.01 to a high of \$451.44. The Department testified that it discussed these variations with Claimant but concluded that the low weekly income balanced the higher weekly income and advised Claimant that she could submit income changes. The Department further testified that Claimant was a simplified reporting (SR) group with the burden of reporting income changes. See BAM 200 (December 2011), p 1. However, SR groups are only required to report income changes when their monthly income exceeds the SR income limit. BAM 200, p 1. In this case, where there were significant variations in weekly income, the Department should have sought 60 to 90 days of income in determining prospective income for purposes of calculating Claimant's FAP budget.

At the hearing, Claimant also contended that the Department should exclude payments her husband received for meetings and flat pay, which were not regular employment occurrences. Earned income includes a client's wages, which is defined to include all of the pay an employee receives from another individual or organization, including salaries, tips, commissions, bonuses, severance pay and flexible benefit funds not used to purchase insurance. BEM 501 (December 2011), pp 2-5. Thus, the Department properly considered all gross income received by Claimant's husband, including flat pay and income received for attending meetings in calculating his gross earned income.

The FAP budget showed unearned income totaling \$832. The Department testified that this was the total of \$696 in Supplemental Security Income (SSI) benefits received by Claimant's son and child support received by Claimant for this son. The Department testified that Claimant's monthly unearned income for child support was based on the average of the child support she received for January 2013, February 2013, and March 2013, and produced a consolidated inquiry showing that Claimant received direct child support totalling \$96 for January 2013, \$134.40 in February 2013, and \$115.20 in March 2013. The Department properly considered the 3-month average of direct child support in calculating Claimant's unearned income. See BEM 503 (May 2013), p 6; BEM 505, pp 3-4. However, the sum of Claimant's son's SSI and the average child support does not total \$832. Thus, the Department has failed to satisfy its burden of showing that it calculated Claimant's unearned income in accordance with Department policy.

Because the Department did not satisfy its burden of showing that it calculated Claimant's earned and unearned income in accordance with Department policy, the Department did not satisfy its burden of establishing that it acted in accordance with Department policy concerning its calculation of Claimant's FAP benefits.


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 not satisfy its burden of showing that it calculated Claimant's monthly MA deductible and FAP benefits in accordance with Department policy.

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

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

1. Begin recalculating Claimant's FAP and MA budgets for May 1, 2013, ongoing;
2. Issue supplements to Claimant for any FAP benefits she was eligible to receive but did not from May 1, 2013, ongoing;
3. Provide Claimant with MA coverage she was eligible to receive from May 1, 2013, ongoing;
4. Notify Claimant in writing of its decision; and
5. Take the preceding steps in accordance with Department policy and consistent with this Hearing Decision.


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

Date Signed: 6/10/2013

Date Mailed: 6/10/2013

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.

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:

