

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201329304
Issue No.: 3015
Case No.: [REDACTED]
Hearing Date: March 13, 2013
County: Kalamazoo County DHS

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

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 three-way telephone hearing was held on March 13, 2013 from Lansing, Michigan. Claimant personally appeared via telephone and provided testimony. Participants on behalf of Department of Human Services (Department) included [REDACTED] [REDACTED] (Eligibility Specialist).

ISSUE

Did the Department properly close Claimant's Food Assistance Program (FAP) case for excess income following Claimant's withdrawals from an Individual Retirement Account (IRA)?

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 active for FAP at all relevant time periods.
2. Following a redetermination, the Department, on January 28, 2013, received verification that Claimant had an IRA with Ameriprise Financial in the amount of \$ [REDACTED]
3. The Department discovered that Claimant, in 2012, made quarterly withdrawals from her IRA for approximately \$ [REDACTED] in total.

4. On January 28, 2013, the Department mailed Claimant a Notice of Case Action (DHS-1605) which closed Claimant's FAP due to excess income effective February 1, 2013.¹

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.

For FAP purposes, all earned and unearned income available to an applicant or recipient is countable. BEM 500. Earned income means income received from another person or organization or from self-employment for duties that were performed for compensation or profit. Unearned income means all income that is not earned, including but not limited to funds received from the Family Independence Program (FIP), State Disability Assistance (SDA), Child Development and Care (CDC), Medicaid (MA), Social Security Benefits (RSDI/SSI), Veterans Administration (VA), Unemployment Compensation Benefits (UCB), Adult Medical Program (AMP), alimony, and child support payments. BEM 500.

The Department uses gross income when determining countable income. Gross income is the amount of income before any deductions such as taxes or garnishments. BEM 500. The amount counted may be more than the client actually receives. BEM 500.

BEM 503 covers unearned income. Payments an individual receives from an annuity are unearned income. BEM 503, p. 4. The Department's computer system (known as "Bridges") counts annuity payments as the individual's unearned income. BEM 503, p 4. Other retirement income includes annuities, private pensions, military pensions, and state and local government pensions. BEM 503, p 20.

BEM 503 discusses interest and dividends paid directly to the client. Bridges counts interest and dividends paid directly to an individual as unearned income. BEM 503 at pp 17. When this occurs, the Department is instructed to choose unearned income type of *Interest Paid Directly to Client* and budget over the period of time intended to cover. BEM 503 p 17. Interest and dividends that are reinvested or deposited back into the asset are excluded as income. BEM 503, p 18.

¹ The Department considered Claimant's \$11,444.44 withdrawal from her IRA as income and then converted it to monthly amount.

BEM 503 at page 18 provides the following two examples. “**Example:** Nicole receives a quarterly interest check from her certificate of deposit (CD). Choose income frequency of *contractual/single payment covering more than one month*, and enter the number of months intended to cover *three*. **Example:** Tiffany has an IRA and chooses to let her interest automatically reinvest in the IRA rather than receiving interest checks. Do not enter these payments in Bridges.” BEM 503 p 18.

BEM 400 covers assets and investments. BEM 400 at page 18 specifically governs the following types of assets: (1) Individual retirement accounts (IRAs); (2) Keogh plans (also called H.R. 10 plans); (3) 401k plans; (4) Deferred compensation; (5) Pension plans; and (5) Annuities-- An annuity is a written contract establishing a right to receive specified, periodic payments for life or for a term of years. **For purposes of FAP, All retirement accounts are excluded as assets. BEM 400 at page 18.**

The Department determines a group’s benefits for a month based, in part, on a prospective income determination. BEM 505. A best estimate of income expected to be received by the group during a specific month is determined and used in the budget computation. BEM 505. The Department will obtain input from the client whenever possible to establish this best estimate amount. BEM 505. The client’s understanding of how income is estimated reinforces reporting requirements and makes the client an active partner in the financial determination process. BEM 505.

A group’s financial eligibility and monthly benefit amount are determined using actual income (income that was already received) and prospected income amounts (not received but expected). BEM 505. Only countable income is included in the determination; see BEM 500.

Each source of income is converted to a standard monthly amount, unless a full month’s income will not be received. BEM 505. The Department will determine budgetable income using countable, available income for the benefit month being processed. BEM 505. For past months, the Department will use actual gross income amounts received for past month benefits, converting to a standard monthly amount, when appropriate. BEM 505. But prospective income **may** be used for past month determinations when all of the following are true: (1) income verification was requested and received; (2) payments were received by the client after verifications were submitted and (3) there are no known changes in the income being prospected. BEM 505.

All income is converted to a standard monthly amount. BEM 505. The Department will convert stable and fluctuating income that is received more often than monthly to a standard monthly amount. BEM 505. If the client is paid weekly, the Department multiplies the average weekly amount by 4.3. BEM 505. If the client is paid every other week, the Department multiplies the average bi-weekly amount by 2.15. BEM 505. Amounts that are received twice a month are added. BEM 505. But the Department should not convert income for the month income starts or stops if a full month’s income is not expected in that month. BEM 505. The Department will use actual income received or income expected to be received in these months. BEM 505.

BEM 550 describes income budgeting policy. When the Department budgets the amount of FAP for a group, it first determines whether there is a senior², disabled person³ or a veteran member of that group. BEM 550. A non-categorically eligible Senior/Disabled/Veteran (SDV) FAP group⁴ must have income below the net income limits. BEM 550. A non-categorically eligible, non-SDV FAP group must have income below the gross and net income limits. BEM 550.

The Department will budget the entire amount of earned and unearned countable income. BEM 550. Gross countable earned income is reduced by a 20% earned income deduction. BEM 550. Every case is allowed the standard deduction shown in RFT 255. BEM 550. The Department documents income budgeting on either a manually-calculated or an automated FAP worksheet. BEM 550.

Here, Claimant does not dispute the facts concerning her IRA, the amounts or the Department's calculations. Rather, Claimant contends that the Department should not treat her IRA withdrawals as income under BEM 503. Claimant also argues that because an IRA is excluded as an asset, withdrawals from the IRA should not be included as income. This is essentially a policy question.

This Administrative Law Judge has reviewed BEM 503 and finds that Claimant's withdrawals from her IRA are properly considered income. BEM 503 specifically provides that payments an individual receives from an annuity are unearned income. BEM 503, p. 4. In addition, this policy also notes that **other retirement income** includes annuities, private pensions, military pensions, and state and local government pensions. BEM 503, p. 20. An IRA is other retirement income for purposes of BEM 503. Accordingly, the Department properly determined that Claimant's IRA withdrawals are income and that her FAP should close due to excess income.

Based upon the above Findings of Fact and Conclusions of Law, the Administrative Law Judge concludes that the Department properly closed Claimant's FAP case due to excess income.

² A "senior" is a person at least 60 years old. BEM 550 p 1.

³ A "disabled" person who receives one of the following: (1) a federal, state or local public disability retirement pension and the disability is considered permanent under the Social Security Act; (2) medicaid program which requires a disability determination by MRT or Social Security Administration; (3) Railroad Retirement **and** is eligible for Medicare or meets the Social Security disability criteria (4) a person who receives or has been certified and awaiting their initial payment for one of the following: (a) Social Security disability or blindness benefits; (b) Supplemental Security Income (SSI), based on disability or blindness, even if based on presumptive eligibility.

⁴ An SDV FAP group is one which has an SDV member. BEM 550 p 1.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department did act properly when it closed Claimant's FAP case due to excess income.

Accordingly, the Department's FAP decision is **AFFIRMED**.

IT IS SO ORDERED.

/s/ _____
C. Adam Purnell
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: March 19, 2013

Date Mailed: March 20, 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.

2013-29304/CAP

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

CAP/cr

cc:

