

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201332233
Issue No.: 3002
Case No.: [REDACTED]
Hearing Date: April 11, 2013
County: Eaton 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 telephone hearing was held on April 11, 2013 from Lansing, Michigan. Claimant personally appeared and provided testimony. Participants on behalf of Department of Human Services (Department) included [REDACTED] (Eligibility Specialist).

ISSUE

Did the Department properly determine Claimant's eligibility for 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 is an SDV who received FAP benefits with a monthly allotment of \$ [REDACTED] and a group size of 1.
2. On February 26, 2013, the Department sent Claimant a Notice of Case Action (DHS-1605) which approved her monthly FAP at \$ [REDACTED] effective March 1, 2013 due to a change in income following redetermination.
3. On March 4, 2013, Claimant filed a hearing request, challenging the Department's determination of her monthly FAP benefits.

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 1997 AACRS R 400.3001-3015.

For FAP purposes, all earned and unearned income available to a 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.

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.

The Department's computer system known as "Bridges" will compute the average monthly income (and convert weekly and every other week amounts) based on the amounts and the number of months entered. 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 senior¹, disabled person² or a veteran member of that group. BEM 550. A non-categorically eligible Senior/Disabled/Veteran (SDV) FAP group³ 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.

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

² 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.

³ An SDV FAP group is one which has an SDV member. BEM 550 p 1.

The Department will use only available, countable income to determine eligibility. BEM 550. It will always calculate income on a calendar month basis to determine eligibility and benefit amounts and use income from a month specified in this item for the benefit month being considered. 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 initially requested a hearing because the Department reduced her monthly FAP from \$200 to \$93. The Department contends that during the redetermination process, it was discovered that Claimant was receiving RSDI that had not been properly budgeted by a previous caseworker. Prior to the case action, the Department had budgeted \$0 monthly income for Claimant. According to the Department, Claimant had actually received \$856.00 per month from the Social Security Administration (SSA) effective May, 2012. The Department also had not properly calculated Claimant's proper monthly rental expenses. When the Department implemented the new changes in income and expenses, the result was a decrease in monthly FAP.

During the hearing, Claimant disagreed with what she considered to be a reduction in her FAP benefits, but she did state that she did not dispute the Department's calculations. Rather, Claimant stated that she was troubled by the manner in which the Department informed her of the change in benefits. Claimant takes exception to the fact that the Department, on February 26, 2013, mailed the notice of case action which advised her that, effective a few days later on March 1, 2013, her FAP monthly amount would decrease. Claimant stated that she did not have enough time to adjust to the change.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). The weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Moreover, it is for the fact-finder to gauge the demeanor and veracity of the witnesses who appear before him, as best he is able. See, e.g., *Caldwell v Fox*, 394 Mich 401, 407; 231 NW2d 46 (1975); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

Because Claimant does not dispute the Department's calculations, the issue for the Administrative Law Judge to decide concerns the notice. The issue in the instant matter invokes policy BAM 222, which governs case actions. Here, Claimant disputes the timing of the Department's notice of case action (DHS-1605) giving rise to her apparent FAP reduction. A negative action is a DHS action to deny an application or to reduce, suspend or terminate a benefit. BAM 222. Upon certification of eligibility results, Bridges

automatically notifies the client in writing of positive and negative actions by generating the appropriate notice of case action. BAM 222. The notice of case action is printed and mailed centrally from the consolidated print center. BEM 222. There are two types of written notice: adequate and timely. BAM 222. Timely notice is given for a negative action unless policy specifies adequate notice or no notice. A timely notice is mailed at least 11 days before the intended negative action takes effect. The action is pending to provide the client a chance to react to the proposed action. However, reducing a FAP group's benefits at redetermination is treated as a **positive action** since the change affects the new certification, not the current benefit period. BAM 222.

Benefits stop at the end of the benefit period unless a redetermination is completed and a new benefit period is certified. BAM 210. The FAP redetermination must be completed by the end of the current benefit period so that the client can receive uninterrupted benefits by the normal issuance date. BAM 210. If timely redetermination procedures are met but too late to meet the normal issuance date, issue benefits within five workdays. BAM 210.

Here, the Department was not required to wait 11 days to mail Claimant the notice of case action. Although Claimant's FAP benefits in the new certification period (beginning March 1, 2013) were lower than before the redetermination, BAM 210 indicates that when a new benefit period is certified following redetermination it is a positive action. The Department's decision to mail the notice of case action on February 26, 2013 which advised Claimant that she was approved for continued FAP effective March 1, 2013 (although at a lower amount than the previous certification period), did not violate policy.

Based upon the above Findings of Fact and Conclusions of Law, the Administrative Law Judge concludes that the Department properly determined Claimant's FAP benefit following redetermination.

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.

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: April 16, 2013

Date Mailed: April 17, 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.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing 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.

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