

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201345733
Issue No.: 3003
Case No.: [REDACTED]
Hearing Date: June 11, 2013
County: Oakland (03)

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 June 11, 2013 from Lansing, Michigan. Claimant personally appeared and provided testimony. Participants on behalf of Department of Human Services (Department) included [REDACTED] (Eligibility Specialist) and [REDACTED] (Assistance Payments Supervisor).

ISSUE

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 received FAP benefits with a group size of 2 (two).
2. In March 2013, Claimant had a monthly FAP allotment of \$367.00.
3. On April 25, 2013, the Department sent Claimant a Notice of Case Action (DHS-1605) which reduced her monthly FAP to \$16.00 effective June 1, 2013.
4. On May 3, 2013, Claimant filed a hearing request, challenging the Department's calculation 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 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. BEM 500. 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.

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. For current and future months, policy indicates that the Department should prospect income using a best estimate of income expected to be received during the month (or already received). BEM 505. (Whenever possible, the Department should seek input from the client to establish an estimate). To prospect income, the Department will need to know: (1) the type of income and the frequency it is received (such as, weekly); (2) the day(s) of the week paid; (3) the date(s) paid; (4) the gross income amount received or expected to be received on each pay date. BEM 505.

Policy provides the Department should use the average of child support payments received in the **past three calendar months**, unless changes are expected. BEM 505. The Department shall include the current month if all payments expected for the month have been received. BEM 505. The Department must not include amounts that are unusual and not expected to continue. BEM 505. Note: The three month period used can begin up to three months before the interview date or the date the information was requested. If payments for the past three months vary, the Department should discuss the payment pattern from the past with the client. The Department should clarify whether the pattern is expected to continue, or if there are known changes. If the irregular pattern is expected to continue, then the Department should use the average of these three months. If there are known changes that will affect the amount of the payments for the future, then the Department shall **not** use the past three months to project. **BEM 505 requires the Department document the discussion with the client and how the Department worker decided on the amount to budget.**

The Department will use past income to prospect income for the future unless changes are expected. BEM 505. Specifically, the Department uses income from the **past 30 days** if it appears to accurately reflect what is expected to be received in the benefit month. BEM 505. The 30-day period used can begin up to 30 days before the interview date or the date the information was requested. BEM 505. But when processing a semi-annual contact, the 30-day period can begin up to 30 days before the day the DHS-1046, Semi-Annual Contact Report, is received by the client or the date a budget is completed. Any 30-day period that best reflects the client's prospective income within these guidelines can be used. BEM 505.

The Department should discard a pay from the past 30 days if it is **unusual and does not reflect the normal, expected pay amounts**. BEM 505. The Department worker should document which pay is being discarded and why. BEM 505. For example, the client worked overtime for one week and it is not expected to recur. BEM 505.

The Department will use income from the **past 60 or 90 days** for fluctuating or irregular income, if: (1) the past 30 days is not a good indicator of future income, and (2) 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. 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.

When the income amount changes, the Department will adjust the amount(s) being budgeted for future pay periods. BEM 505. For earned income, if the rate of pay changes, but hours are expected to remain the same, the Department will use the past hours worked times the new rate of pay to determine the amount to budget for future pay periods. BEM 505. **If there is a change in expected hours, but no change in the rate of pay, the Department will use the expected hours times the rate of pay to determine the amount to budget per pay period. BEM 505.** If payments in the new amount have been received and they are accurate reflections of the future income, the Department will use them in the budget for future months. 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.

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 requested a hearing because her March to April (2013) FAP reduced from \$208.00 to \$16.00. Claimant contends that the Department did not properly calculate her income during this time period. The Department, on the other hand, takes the position that the Department calculated the FAP allotment properly based on the 3 jobs and child support income reported at the time.

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).

Claimant worked for a staffing company as a substitute teacher and also received child support. The record contains 60 pages of exhibits. Many of the exhibits concerned issues unrelated to Claimant's request for hearing. During the hearing, the Department workers were unable to clearly articulate why Claimant's FAP reduced so drastically from \$367.00 to \$16.00. Claimant did receive a child support payment of \$897.15 on April 24, 2013. But this alone would not explain Claimant's FAP reduction to \$16.00 which was in effect on April 1, 2013. At one point, the Department suggested that the \$367.00 FAP allotment in March may have been an error. Claimant also disputed the Department's calculation of her income from [REDACTED], which appeared to indicate that Claimant earned \$85.00 per hour. However, the Department indicated in some of its documents that Bridges had erred with regard to Claimant's income. In the Bridges Case Comments-Summary dated April 25, 2013, a note indicated: "Bridges showing client recvd \$367 in March (ben. Issuance), income seems to be reading correctly now, was not before. . . ." However, this Administrative Law Judge finds that the Department's confusion during the hearing reflects the likelihood that Claimant's income was not properly entered in to the Bridges system.

Based upon the above Findings of Fact and Conclusions of Law, the Administrative Law Judge concludes that the Department improperly calculated Claimant's monthly FAP allotment from March through May 2013.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department did not act properly.

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

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

- Initiate a redetermination of Claimant's FAP benefits from March 1, 2013 through May 31, 2013. This redetermination should include verification of Claimant's earned and unearned income during this time period. With regard to Claimant's earned income, her proper hourly rate of pay should be confirmed.
- Only to the extent required by policy, the Department shall provide Claimant with any supplemental and/or retroactive benefits.

IT IS SO ORDERED.

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

Date Signed: June 17, 2013

Date Mailed: June 18, 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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