

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

**IN THE MATTER OF:**



Reg. No.: 201349017  
Issue No.: 2013, 3000  
Case No.: [REDACTED]  
Hearing Date: June 25, 2013  
County: Clinton

**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 25, 2013 from Lansing, Michigan. Claimant personally appeared and provided testimony. Participants on behalf of the Department of Human Services (Department) included [REDACTED] (Eligibility Specialist).

**ISSUE**

Did the Department properly determine that Claimant was not self-employed when it calculated Claimant's Medical Assistance (MA) 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 applied for MA and Food Assistance Program (FAP) benefits on March 11, 2013.
2. On March 14, 2013, the Department mailed Claimant a verification checklist (DHS-3503) which requested documentation concerning Claimant's wages, salaries, tips, etc. The due date was March 25, 2013.
3. Claimant returned the requested verifications timely.
4. On March 29, 2013, the Department mailed Claimant a Notice of Case Action (DHS-1605), which approved Claimant for a MA deductible for \$969.00 for the period of March 1, 2013 through March 31, 2013 and \$1,313.00 effective April 1, 2013 and ongoing.

5. Claimant requested a hearing regarding FAP and MA challenging the Department's calculation of her income and the determination that she was an employee and not self-employed.
6. Claimant, on the record, withdrew her request for hearing concerning FAP and wished to proceed with a hearing on the MA issue only.

### **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 Mich Admin Code, R 400.3101 through R 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 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.

The Adult Medical Program (AMP) is established by 42 USC 1315, and is administered by the Department pursuant to MCL 400.10, *et seq.*

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, is established by 2004 PA 344. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.10, *et seq.*, and 2000 AACS, R 400.3151 through R 400.3180.

The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, the Child Care and Development Block Grant of 1990, and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The program is implemented by Title 45 of the Code of Federal Regulations, Parts 98

and 99. The Department provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001 through R 400.5015.

Here, Claimant challenges the Department's decision to approve her MA deductible amount based on her income from employment. Specifically, Claimant disputes the Department's finding that her income was from employment rather than from self-employment. As a result of this determination, the Department will not consider Claimant's self-employment expenses during the MA budgeting process. Claimant contends that the Department erred because she is self-employed. Thus, the salient question in this matter is whether Claimant should be considered employed or self-employed for purposes of MA eligibility.

An individual who runs his/her own business is self-employed. BEM 502. This includes but is not limited to selling goods, farming, providing direct services, and operating a facility that provides services such as adult foster care home or room and board. BEM 502.

BEM 502 identifies the following: (1) guidelines for determining if an individual's income is considered to be from employment or self-employment; (2) allowable expenses of producing self-employment income; and (3) self-employment income types.

For all types of assistance, BEM 502 provides that an individual who runs their own business is self-employed. This includes but is not limited to selling goods, farming, providing direct services, and operating a facility that provides services such as adult foster care home or room and board. BEM 502.

BEM 502 recognizes that sometimes determining if an individual's income should be considered earned income or self-employment may be difficult. The Department employee is instructed to make a determination based on available information and he or she must document the rationale for the decision. BEM 502. To help make that determination BEM 502 directs the Department employee to consider the following guidelines as indicators of self-employment:

- The individual sets his/her own work hours.
- The individual provides his/her own tools used on the job.
- The individual is responsible for the service being provided and for the methods used to provide the service.
- The individual collects payment for the services provided from the individual paying for them.

A client need not meet all of the above to be considered self-employed. BEM 502. In making the determination, the policy prohibits the Department from considering the following:

- Withholding of income tax from payment made to individual.
- Whether or not the individual files income tax.

- Whether or not individual receives a federal form 1099. BEM 502.

To assist in the determination of employment versus self-employment logical unit of work (LUW), BEM 502 (at page 2) includes the following four examples:

**Example 1:** Joe has a contract with the local hospital to provide snow removal services. He drives his own snow removal vehicle and pays for his own gas. The hospital pays him directly based on the number of times his services are used. Joe is self-employed.

**Example 2:** Jane is a hair dresser at a salon. The salon supplies all the products she uses on the job. Jane's clients pay the salon for the services Jane provides. Jane receives a paycheck from the salon each week for 50 percent of the income from her clients. For income budgeting purposes, Jane is an employee of the salon and her income should be entered in the earned income LUW; not the self-employment LUW.

**Example 3:** Rich provides home help care for his elderly neighbor, Sam. Sam receives assistance through DHS' Independent Living Services (Adult Home Help) program to pay for Rich's services. Rich is an employee of Sam and his income should be entered in the earned income LUW; not the self-employment LUW.

**Example 4:** Mary Jo is a massage therapist at a local chiropractor's office. She uses a room in the office and uses their table. She provides her own oils and linens used for the massages and sets her own hours. She collects payment directly from the clients and pays the chiropractor's office \$10 for each massage provided. Mary Jo is self-employed.

The record in this matter indicates that Claimant works as a medical courier. Claimant's employment requires her to transport laboratory specimens from medical providers to testing laboratories. Claimant testified that she does not have set work hours and that she is paid "by the stop." Claimant initially stated that she drives a separate route for her in-law's business called "██████." Later, Claimant stated that each delivery assignment begins after the lab calls and requests that a medical specimen be retrieved and delivered. Claimant also testified that the lab purchased a cooler that she uses to deliver the specimens. Claimant uses her own vehicle and is responsible for all travel-related expenses including gas, oil changes, tires, and vehicle maintenance. Claimant is paid once a month and receives a check from "██████." She is not paid directly from the lab or the medical provider. The Department did not dispute Claimant's testimony, but insisted that Claimant was not self-employed under BEM 502.

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).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. The evidence in this matter shows that Claimant is not self-employed. She does not set her own work hours as the hours are set by the labs and medical providers. Although Claimant uses her own vehicle, she is provided a cooler to do the job. In addition, Claimant does not collect payment for the services provided from the lab or medical providers, but she is paid by "██████." Based on the competent, material, and substantial evidence presented during the hearing, this Administrative Law Judge finds that the Department properly determined that Claimant's income was from employment rather than self-employment.

**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 determined Claimant's MA eligibility because Claimant is employed, rather than self-employed.

Accordingly, the Department's  AMP  FIP  FAP  MA  SDA  CDC decision is  **AFFIRMED**.

Claimant's request for hearing concerning FAP is **DISMISSED** because Claimant testified on the record that she no longer wished to dispute the FAP issue.

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

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

Date Signed: June 28, 2013

Date Mailed: July 1, 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 affect the substantial rights of the claimant,
  - 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

CAP/aca

cc:

