

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-56288
Issue Nos.: 3014, 3015
Case No.: [REDACTED]
Hearing Date: August 1, 2013
County: Macomb (50-20)

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 August 1, 2013, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED].

ISSUE

Did the Department properly deny Claimant's April 30, 2013, Food Assistance Program (FAP) application?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On April 30, 2013, Claimant applied for FAP assistance for himself and his three minor children.
2. Claimant included a Consent Order of Permanent Custody and Parenting date-stamped April 29, 2013, showing that Claimant and the children's mother had joint legal and physical custody of the children and Claimant had parenting time each week from Monday after school until Friday morning.
3. On May 14, 2013, the Department sent Claimant a Notice of Case Action notifying him that his application was denied because the children were eligible for FAP in another case and because Claimant's gross income exceeded the income limit applicable to a group size of one.

4. On July 8, 2013, Claimant requested a hearing disputing the Department's actions.

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.

At the hearing, the Department acknowledged that, based on the April 29, 2013, Consent Order of Permanent Custody and Parenting Time Claimant submitted with his April 30, 2013, FAP application, Claimant established that he was the children's primary caretaker. See BEM 212 (November 2012), pp. 1, 3-4. However, the Department contended that, because the children were on their mother's FAP case at the time of Claimant's FAP application, Claimant would not be eligible to include them in his FAP group until June 1, 2013.

Department policy provides that when a member leaves a group to join another group, the Department must do a member delete in the month it learns of the application/member add and initiate recoupment, if necessary. BEM 212, p. 7; BEM 550 (February 2012), p. 3. In this case, the Department became aware that the children left their mother's FAP group on April 30, 2013. Thus, the Department should have removed the children from their mother's FAP group in April 2013 because that is the month it learned of the member delete. Department policy further provides that a member add that increases benefits is effective the month after it is reported *or, if the new member left another group, the month after the member delete*. BEM 212, p. 7 (emphasis added); BEM 550, p. 3; see also BAM 220 (November 2012), p. 3. Because the children should have been deleted from their mother's group in April 2013, Claimant would have been eligible to include the children in his FAP group effective May 1, 2013.

Because Claimant applied for FAP benefits on April 30, 2013, his group for April 2013 consisted of just himself. Claimant conceded that he earned \$1,383.43 per paycheck and was paid twice a month. Based on this pay, Claimant's gross monthly earned income was \$2,766. See BEM 505 (October 2010), p. 6. The gross income limit for FAP eligibility for a FAP group with one member is \$1,862. BEM 213 (October 2011) [providing that all FAP applicants are eligible for enhanced authorization for Domestic Violence Prevention Services (DVPS)], p. 1; RFT 250 (October 2012), p. 1, Column D (the gross income limit applicable to enhanced domestic violence authorization). Because Claimant's gross income exceeded the gross income limit, the Department

acted in accordance with Department policy to the extent that it denied Claimant's application for the month of April 2013.

However, if a client is not income eligible for FAP benefits for the month of application but is eligible in the next month, the Department temporarily suspends issuance of benefits for a month and the application can be approved for FAP eligibility with an effective date the first day of the month following the application month. BEM 556 (July 2011), p. 6; BAM 115 (January 2013), p. 22; BEM 550 (February 2012), p. 4. In this case, although Claimant was not income eligible for FAP benefits during the month of April 2013, the Department did not determine his FAP eligibility for May 2013 based on a FAP group consisting of Claimant and his three children. In failing to do so, the Department did not act in accordance with Department policy.

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 act in accordance with Department policy when it denied Claimant's FAP application.

Accordingly, 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 eligibility for May 1, 2013, ongoing in accordance with Department policy and consistent with this Hearing Decision to include Claimant's children in his group size;
2. Issue supplements to Claimant for FAP benefits he was eligible to receive but did not from May 1, 2013, ongoing;
3. Notify Claimant in writing of its decision.



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

Date Signed: August 5, 2013

Date Mailed: August 6, 2013

NOTICE OF APPEAL: 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 or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

ACE/pf

cc:

