

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

IN THE MATTER OF:

██████████
██████████
██████████

Reg. No.: 2013-57850
Issue No.: 3002;5022
Case No.: ██████████
Hearing Date: August 12, 2013
County: Wayne (15)

ADMINISTRATIVE LAW JUDGE: Zainab Baydoun

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 conducted on August 12, 2013 from Detroit, Michigan. Claimant appeared and testified. Participating on behalf of the Department of Human Services (Department) was ██████ ██████ Assistance Payment Worker, and ██████ ██████ Assistance Payment Worker.

ISSUE

Did the Department properly calculate the amount of Claimant's Food Assistance Program (FAP) benefits?

Did the Department act in accordance with Department policy when it processed Claimant's application for State Emergency Relief (SER)?

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 an ongoing recipient of FAP benefits.
2. On June 28, 2013, the Department sent Claimant a Notice of Case Action informing her that she was approved for FAP benefits in the amount of \$98.00 effective August 1, 2013. (Exhibit 2).
3. Claimant did not agree with the Department's calculation of her FAP benefits.

4. On May 8, 2013, an administrative hearing was held with regard to the processing of Claimant's March 18, 2013 and March 26, 2013 applications for SER.
5. The May 8, 2013 Hearing Decision found that the Department did not act in accordance with Department policy when it processed Claimant's SER applications and ordered the Department to initiate certain actions with respect to those applications.
6. The Department did not comply with the orders of the Administrative Law Judge in the May 8, 2013 Hearing Decision.
7. On July 3, 2013, Claimant filed a hearing request disputing the Department's actions.

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. Rule 400.3001 through Rule 400.3015.

Additionally, all countable earned and unearned income available to the client must be considered in determining the Claimant's eligibility for program benefits. BEM 500 (January 2013), pp. 1 – 3. The Department determines a client's eligibility for program benefits based on the client's actual income and/or prospective income. Prospective income is income not yet received but expected. BEM 505 (October 2010), p. 1. In calculating a client's earned income, the Department must determine a best estimate of income expected to be received by the client during a specific month. BEM 505 (October 2010), p 2. In prospecting income, the Department is required to use income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month, discarding any pay if it is unusual and does not reflect the normal, expected pay amounts. BEM 505, p. 4. If income received in the past 30 days is not a good indicator of future income, and 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, the Department must use income from the past 60 or 90 days for fluctuating or irregular income. BEM 505, p 5. Additionally, the Department is to consider the frequency in which the income is received in order to best determine the calculation of Claimant's prospective earnings. The Department is also required to apply a 20% earned income deduction to Claimant's total earned income. BEM 550 (February 2012), p. 1.

At the hearing, the budget summary from the June 28, 2013 Notice of Case Action was reviewed. (Exhibit 2). The Department concluded that Claimant had earned income of \$1,196.00. The Department testified that in calculating Claimant's monthly earned income, it considered the one pay check that Claimant received for her employment in the month of June 2013. Claimant confirmed that in June 2013, she received one pay check in the amount of \$1,196.03; however, she also stated that this pay check was unusually high and that she only earns this amount once a year. Claimant testified that because she is employed by the United States Army Reserve (USAR), she only works one weekend a month and gets paid monthly. Claimant stated that for two weeks out of the year, she goes to annual training and that the check she received in June 2013 reflected her training for the period of June 1, 2013 through June 15, 2013. Claimant further testified that she usually gets paid \$292.00 monthly, for which she provided the Department with verification.

Under the facts in this case, where Claimant only gets paid for her two week annual training once per year, the Department did not act in accordance with Department policy when it failed to discard the \$1,196.00 check, as it is an unusual pay check that is not an accurate reflection of Claimant's future monthly earnings. Therefore, the Department did not properly calculate Claimant's earned income.

The budget shows that the Department applied the \$148.00 standard deduction applicable to Claimant's confirmed group size of one and that the \$575.00 standard heat and utility deduction available to all FAP recipients was properly applied. (Exhibits 1);RFT 255 (October 2012), p 1; BEM 554 (October 2012), pp. 11-12. The Department determined Claimant's housing costs were \$1,490.00, which Claimant confirmed.

Because of the errors in the calculation of Claimant's earned income however, the Department did not act in accordance with Department policy when it calculated Claimant's FAP benefits effective August 1, 2013.

SER

The State Emergency Relief (SER) program is established by 2004 PA 344. The SER program is administered pursuant to MCL 400.10, et seq., and by Mich Admin Code, R 400.7001 through R 400.7049.

Additionally, Claimant requested a hearing regarding the Department's failure to comply with a previous administrative hearing decision with respect to her applications for SER.

On May 8, 2013, an administrative hearing was held with regard to the denial of Claimant's March 18, 2013 and March 26, 2013 applications for SER. The May 8, 2013 Hearing Decision found that the Department did not act in accordance with Department policy when it denied Claimant's SER applications and the decision ordered the Department to initiate certain actions with respect to Claimant's SER applications. The Department was ordered to reregister and reprocess Claimant's March 18, 2013 and

March 26, 2013 applications for SER in accordance with Department policy and to issue new SER Decision Notices for each application.

At the August 12, 2013 hearing, Claimant testified that the Department failed to process her applications based on her eligibility for SER at the time of her application in March 2013 and instead processed her applications based on her eligibility at the time the hearing decision was implemented in May 2013. Claimant stated that the Department sent her an SER Decision Notice dated May 31, 2013 denying her request for SER assistance on the basis that the emergency has been resolved and that Claimant does not have a shutoff notice, among other things. (Exhibit A). Claimant further testified that she spoke with a representative from DTE on June 5, 2013 regarding the status of her account because her electricity had been shut off and was informed that the Department contacted DTE on May 31, 2013, the same day the SER Decision Notice was sent to her.

The Department disputed Claimant's testimony and stated that it registered and reprocessed Claimant's original March 18, 2013 and March 26, 2013 applications for SER according to her eligibility in March 2013 and that it sent Claimant new SER Decision Notices regarding the applications. The Department testified that the May 31, 2013 SER Decision Notice presented by Claimant at the hearing is not the one that was sent to Claimant in connection with the reprocessing of the March 18, 2013 and March 26, 2013 applications for SER. The Department did not present another SER Decision Notice in support of its testimony however. The Department did not present sufficient evidence to establish that it acted in accordance with Department policy and complied with the prior May 8, 2013 Hearing Decision by reregistering and reprocessing the March 18, 2013 and March 26, 2013 SER applications.

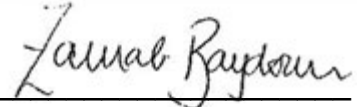
DECISION AND ORDER

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 calculated the amount of Claimant's monthly FAP benefits and failed to comply with the May 8, 2013 Hearing Decision. Accordingly, the Department's decisions with respect to FAP and SER are 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 budget for August 1, 2013 ongoing in accordance with Department policy and consistent with this Hearing Decision;
2. Begin issuing supplements to Claimant for any FAP benefits that she was eligible to receive but did not from August 1, 2013 ongoing;
3. Reregister Claimant's March 18, 2013 and March 26, 2013 applications for SER;

4. Begin reprocessing both applications to determine Claimant's eligibility for SER as of her application date in March 2013, in accordance with Department policy and consistent with this Hearing Decision; and
5. Issue new SER Decision Notices for each application.



Zainab Baydoun
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: August 21, 2013

Date Mailed: August 21, 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

ZB/cl

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]