

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

IN THE MATTER OF:



Reg. No.: 2013-57922
Issue Nos.: 3014, 3002
Case No.: [REDACTED]
Hearing Date: August 14, 2013
County: Wayne (82-19)

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 14, 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 calculate Claimant's Food Assistance Program (FAP) benefits for May 1, 2013, ongoing?

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 May 16, 2013, the Department sent Claimant a Notice of Case Action notifying her that her FAP household size was decreasing from 3 to 2 between May 1, 2013, and June 30, 2013, and FAP would decrease from \$526 to \$367 monthly during this period.
3. On June 29, 2013, the Department sent Claimant a Notice of Case Action notifying her that effective July 1, 2013, ongoing she was eligible for monthly FAP benefits of \$318 based on a household size of 2.

4. On July 11, 2013, Claimant requested a hearing disputing the Department's actions concerning her Family Independence Program (FIP), FAP and Child Development and Care (CDC) cases.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), the Department of Human Services Bridges Eligibility Manual (BEM), and the 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.

Additionally, although Claimant requested a hearing concerning her FIP, FAP and CDC cases, at the hearing, Claimant testified that her concerns regarding her FIP and CDC cases had been resolved to her satisfaction and she wished to dismiss her hearing request with respect to her FIP and CDC issues. The hearing proceeded to address Claimant's FAP concerns.

The Department sent Claimant the first of two Notices of Case Action concerning her FAP benefits on May 16, 2013, notifying her that her FAP benefits were decreasing to \$367 for May 1, 2013, to June 30, 2013, because of a decrease of her FAP group size from 3 to 2. At the hearing, the Department explained that Claimant had been disqualified as a member of her FAP group because she had failed to comply with FAP employment requirements.

A client must comply with FAP work requirements unless deferred. BEM 230B (June 2013), p. 2; BEM 233B (January 2013), p. 3. A deferral applies to clients who are under age 16 or at least age 60; are personally caring for a child under age six; are personally caring for a disabled member of the FAP group; are incapacitated due to injury, physical illness or mental illness; are enrolled in a post-secondary education program; are pregnant; applied for both Supplemental Security Income (SSI) and FAP through the Social Security Administration; are participating in inpatient or outpatient programs for substance abuse treatment and rehabilitation; or have applied or receive unemployment benefits. BEM 230B, pp. 4-5. The evidence at the hearing did not establish that Claimant was eligible for a deferral.

In order to receive FAP benefits, non-deferred adults who are already working may not voluntarily quit a job of 30 hours or more per week without good cause or voluntarily reduce hours of employment below 30 hours per week without good cause. BEM 230B (June 2013), p. 2; BEM 233 (January 2013), pp. 3-4. Non-deferred adults who are not

working or are working less than 30 hours per week must accept a bona fide offer of employment and participate in activities required to receive unemployment benefits if the client has applied for or is receiving unemployment benefits. BEM 230B, p. 2; BEM 233B, p. 4. Clients who are required to comply with the FAP work requirements but fail to do so are disqualified from their FAP group. BEM 230B, p. 2; BEM 212 (November 2012), pp. 6-7. The Department must notify the client of an FAP employment-related noncooperation, schedule a triage, and determine whether the client had good cause for the noncompliance before implementing an FAP employment-related disqualification. BEM 233B, pp. 4-5.

In this case, the Department testified that Claimant had been disqualified from her FAP group because she had refused employment on February 8, 2013. After the hearing, the Department provided an April 12, 2013, Notice of Noncompliance sent to Claimant advising her of the FAP noncompliance and scheduling a triage on April 19, 2013. However, the Department did not present any evidence during the hearing concerning whether Claimant's employment at [REDACTED] was more than 30 hours weekly, whether the triage was held, or the outcome at the triage. Thus, the Department failed to satisfy its burden of showing, at the hearing, that it acted in accordance with Department policy when it found that Claimant was noncompliant with her FAP employment obligations and had no good cause for her noncompliance.

At the hearing, Claimant credibly testified that she had never refused employment but admitted that she had been fired from her employment at [REDACTED] in February 2013. Department policy does not provide that a client is noncompliant with her work activities if her employment is terminated by the employer. Because Claimant did not voluntarily quit or reduce her work hours, the Department did not act in accordance with Department policy when it removed her as a member of her FAP group effective May 1, 2013.

Claimant's FAP budget was also reviewed at the hearing. Claimant verified all of the information used to calculate her monthly FAP benefits, other than the disputed group size and the calculation of her child support income. The calculation of monthly child support income requires use of an average of the past three months' received payments unless changes are expected or there is an irregular pattern of payment that is not expected to continue. BEM 505 (October 2010), p. 3. For FAP cases, the Department does not consider certified support, which is retained by the Department, only direct support. BEM 503 (July 2013), p. 5.

In this case, the Department testified that it relied on the average monthly child support Claimant received for her two children based on the amounts she received in April 2013, May 2013, and June 2013 to arrive at the gross monthly child support of \$140. However, a review of the direct child support income for the months the Department testified it used to calculate the child support does not support the Department's conclusion that Claimant received \$140 monthly in child support. Thus, the Department has failed to satisfy its burden of showing that it calculated the child support income in accordance with Department policy.

It is noted that, while Claimant testified that her gross monthly child support income had increased effective July 2013, this change resulted from the payor receiving unemployment compensation, a circumstance Claimant was not aware of at the time her FAP budget was recalculated for the periods considered by the Department in connection with Claimant's hearing request.

A review of Claimant's budget also showed that there were no dependent care expenses considered in the calculation of Claimant's FAP benefits. The Department allows a deduction for unreimbursed dependent care expense for a child who is a member of the FAP group when such care is necessary to enable a member of the FAP group to work. BEM 554 (October 2012), p. 6. The amount does not have to be paid to be allowed. BEM 554, p. 6.

In this case, Claimant credibly testified that she had weekly \$25 child care expenses that were not reimbursed by the Department. Although Claimant admitted that she had not verified her dependent care expenses, the Department requests verification of such expenses at application, reported change and redetermination. In this case, Claimant was employed as of May 28, 2013, and the Department approved Claimant's request for CDC benefits at a rate of 95%, leaving Claimant with the responsibility to pay the remaining 5% in expenses. Therefore, the Department should have been aware of Claimant's responsibility to pay dependent care expenses in connection with her employment, at least by the date the New Hire Client Notice was returned to the Department.

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 did not include verified dependent care expenses in Claimant's FAP budget and failed to satisfy its burden of showing that it acted in accordance with Department policy when it removed Claimant as a qualified member of her FAP group and calculated Claimant's child support income.

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:

1. Remove the FAP employment disqualification entered on or about May 1, 2013, from Claimant's record;
2. Begin recalculating Claimant's FAP budget from May 1, 2013, ongoing in accordance with Department policy and consistent with this Hearing Decision;
3. Issue supplements to Claimant for any FAP benefits she was eligible to receive but did not from May 1, 2013, ongoing; and

4. Notify Claimant in writing of its decision in accordance with Department policy.


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

Date Signed: August 20, 2013

Date Mailed: August 20, 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:

