

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

IN THE MATTER OF:

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Reg. No.: 2013-58190
Issue No.: 3003
Case No.: ██████████
Hearing Date: August 15, 2013
County: Oakland (02)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

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 15, 2013, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included ██████████ Eligibility Specialist.

ISSUE

Did the Department properly calculate Claimant's Food Assistance Program (FAP) benefits effective August 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 is an ongoing recipient of FAP benefits.
2. On June 11, 2013, the Department sent Claimant a redetermination, which was due back by July 3, 2013. Exhibit 1.
3. On June 21, 2013, Claimant submitted a completed redetermination. See Exhibit 1.
4. Based on the submitted redetermination, on July 5, 2013, the Department sent Claimant a Notice of Case Action notifying him that his FAP benefits were approved in the amount of \$59 effective August 1, 2013, ongoing. Exhibit 1.

5. On July 10, 2013, Claimant filed a hearing request, protesting the Department's action. Exhibit 1.

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, R 400.3001 through R 400.3015.

A group's financial eligibility and monthly benefit amount are determined using: actual income (income that was already received) or prospected income amounts (not received but expected). BEM 505 (October 2010), p. 1. Only countable income is included in the determination. BEM 505, p. 1. Each source of income is converted to a standard monthly amount, unless a full month's income will not be received. BEM 505, p. 1. The Department converts stable and fluctuating income that is received more often than monthly to a standard monthly amount. BEM 505, p. 6. The Department uses one of the following methods: (i) multiply weekly income by 4.3; (ii) multiply amounts received every two weeks by 2.15; or (iii) add amounts received twice a month. BEM 505, p. 6.

Moreover, the Department determines budgetable income using countable, available income for the benefit month being processed. BEM 505, p. 2. The Department uses actual gross income amounts received for past month benefits, converting to a standard monthly amount, when appropriate. BEM 505, p. 2. Except, the Department can use prospective income for past month determinations. BEM 505, p. 2. In prospecting income, the Department is required to use income from the past thirty 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.

At the hearing, the Department presented the FAP August 2013 budget for review. See Exhibit 1. It was not disputed that the certified group size was one and that the FAP group does not contain a senior/disabled/disabled veteran (SDV) member. The Department calculated Claimant's total earned income amount to be \$1,097. The Department testified that it calculated this amount based on Claimant's submitted pay stubs at the time of redetermination. The Department used two submitted pay stubs by the Claimant. The first pay stub had the following information: pay date: 6/14/2013; 32 hours worked; pay rate is \$9.00 an hour; biweekly pay; and gross pay of \$510.33. See Exhibit 1. The second pay stub had the following information: pay date: 6/28/2013; 40 hours worked; pay rate is \$9.00 an hour; biweekly pay; and gross pay of \$510.34. See Exhibit 1. The Department added both gross payments, which resulted in the amount of

\$1,020. Then, the Department took an average of the biweekly pay, which resulted in the amount of \$510 (\$1,020 divided by two). Using the conversion for biweekly income as outlined in BEM 505; Claimant's son standard monthly amount would be \$1,097 (\$510 biweekly pay times 2.15). BEM 505, p. 6. Claimant disagreed with the calculation of his earned income.

Claimant testified that he works an average of 20 hours per week, is paid \$9.00 an hour, is paid biweekly, and earns an average of \$720 gross pay per month. Claimant also noted that the pay stubs the Department used did not reflect his normal pay. Claimant testified that both pay stubs had a cost of living increase in the amount of \$150. See Exhibit 1. Claimant testified that he works for a non-profit and that the cost of living was basically his bonus. Claimant testified that it only happens once a year and he had the option to have the cost of living added to two of his pay stubs. Claimant testified that this amount should have not been included in the calculation of his earned income.

A review of the other submitted pay stubs does not indicate any cost of living. See Exhibit 1. Moreover, the other submitted pay stubs gross earnings range from \$360 to \$427. See Exhibit 1.

Based on the foregoing information and evidence, the Department improperly calculated Claimant's FAP budget. Claimant provided credible evidence and testimony that the cost of living does not reflect his normal, expected pay amounts. A review of Claimant's other pay stubs does not indicate any cost of living and there are differences in the gross pay amounts as well. The Department is to discard the cost of living because they are unusual and do not reflect the normal, expected pay amounts that Claimant receives. See BEM 505, p. 4.

It should be noted that the Department did apply the correct \$148 standard deduction applicable to Claimant's group size of one. RFT 255 (October 2012), p. 1. Also, the Department properly calculated Claimant's housing expenses to be \$48 as well as the \$575 heat/utility standard. See Notice of Case Action, Exhibit 1; See RFT 255, p. 1.

In summary, the Department improperly calculated Claimant's FAP budget effective August 1, 2013, ongoing. The Department is to exclude Claimant's cost of living increase because it does not reflect Claimant's normal, expected pay amount. BEM 505, p. 4.

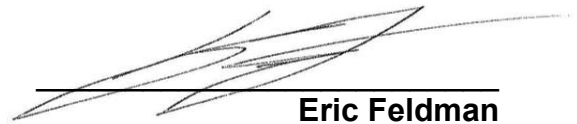
DECISION AND ORDER

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 improperly calculated Claimant's FAP benefits for the effective benefit period of August 1, 2013, ongoing.

Accordingly, the Department's AMP FIP FAP MA SDA CDC decision is AFFIRMED REVERSED for the reasons stated on the record.

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

1. Begin recalculating the FAP budget for August 1, 2013, ongoing, subject to discarding any pay if it is unusual and does not reflect Claimant's normal, expected pay amounts, in accordance with Department policy;
2. Begin issuing supplements to Claimant for any FAP benefits he was eligible to receive but did not from August 1, 2013, ongoing; and
3. Begin notifying Claimant in writing of its FAP decision in accordance with Department policy.



Eric Feldman
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: August 22, 2013

Date Mailed: August 22, 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

EJF/cl

cc:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]