

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

IN THE MATTER OF:

██████████
██████████
██████████

Reg. No.: 2014-2778
Issue No.: 3003
Case No.: ██████████
Hearing Date: November 4, 2013
County: Wayne (35)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a telephone hearing was held on November 4, 2013, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department or DHS) included ██████████, Eligibility Specialist.

ISSUE

Did the Department properly calculate Claimant's Food Assistance Program (FAP) allotment in the amount of \$180 effective October 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 August 13, 2013, the Department sent Claimant a Redetermination, which was due back by September 5, 2013. See Exhibit 1.
3. On September 4, 2013, Claimant submitted a completed Redetermination. See Exhibit 1.
4. On September 20, 2013, the Department sent Claimant a Notice of Case Action notifying her that she was approved for FAP benefits in the amount of \$180 effective October 1, 2013, ongoing. See Exhibit 1.

5. On September 27, 2013, Claimant filed a hearing request, disputing her FAP allotment. Exhibit 1.

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), Department of Human Services Reference Tables Manual (RFT), and Department of Human Services Emergency Relief Manual (ERM).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food Stamp Act of 1977, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 and Mich Admin Code, R 400.3001 to .3015.

As a preliminary matter, Claimant testified that she did not continue receiving the amount of FAP benefits that she now receives until her hearing decision. However, a review of Claimant's Request for Hearing indicated that she did not check "yes" to the question of whether she wanted to continue receiving the amount of FAP benefits that she now receives until her hearing decision. See Exhibit 1. Thus, the Department properly did not issue Claimant's previous continuing benefits as she did not properly check mark that section. See Exhibit 1 and see BAM 600 (July 2013), pp. 17-18.

It is not disputed that the group size is five and there are no senior/disabled/disabled veteran (SDV) members. The Department failed to present an October 2013 FAP budget; however, the Notice of Case Action was used in substitution of the budget as it contained a budget summary. See Exhibit 1.

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 (July 2013), 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. 7. 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, pp. 7-8.

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. 5.

In this case, the Department calculated Claimant's gross earned income to be \$2,695. The Department obtained this amount from a verification source. The Department presented the verification source, which showed the Claimant receiving three bi-weekly pay dates for August 2013. See Exhibit 1. The three pay dates are described as follows: pay date on 8/2/2013 in the amount of \$865.03 and 74.63 hours worked; pay date on 8/16/13 of \$803.14 and 70.46 hours worked; and pay date on 8/30/2013 of \$1,027.63 and 88.35 hours worked. See Exhibit 1. The Department testified that it used these three amounts to calculate the earned income. When all three amounts are added together, it results in a total earned income of \$2,695 as indicated in the budget summary. See Exhibit 1.

Claimant testified the Department calculated the incorrect earned income. Claimant testified that her monthly earned income before deductions is \$2,140. See Request for Hearing, Exhibit 1. Claimant also testified that she works 40 hours a week, is paid bi-weekly, and she is paid \$13.37 hourly. Claimant also testified that she does not usually work overtime as indicated on the pay date of 8/30/2013, which showed that she worked 88.35 hours. See Exhibit 1.

Based on the foregoing information and evidence, the Department improperly calculated Claimant's earned income in accordance with Department policy. It was proper for the Department to use Claimant's actual income to determine the FAP group's financial eligibility and monthly benefit amount. However, the Department failed to convert the actual income amount to a standard monthly amount. 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. 7. The Department should have averaged all three bi-weekly payments in August 2013 and then multiplied that average amount by 2.15 to convert it to a standard monthly amount. BEM 505, pp. 7-8. Based on the Department's testimony and evidence, it appeared that it only added up all three bi-weekly pay dates, which resulted in the \$2,695 total. Thus, the Department will recalculate the earned income and convert it to a standard monthly amount in accordance with Department policy.

It should also be noted that the verification source indicated that Claimant does work overtime on other occasions. For example, on 9/13/2013, the pay date indicated she worked 85.5 hours. See Exhibit 1. Also, on 6/21/2013, the pay date indicated she worked 84 hours. See Exhibit 1. Thus, the Department does not have to discard any pay from the past 30 days if it is unusual and does not reflect the normal, expected pay amounts. See BEM 505, p. 5.

Moreover, the Department also calculated Claimant's unearned income in the amount of \$298, which consisted of Claimant's child support income. See Exhibit 1. The Department presented as evidence Claimant's child support income. The Department

testified that it took the following payments to determine the average child support income: \$353 in July 2013; \$353 in August 2013; and \$139 in September 2013. See Exhibit 1.

Claimant disagreed with the calculation of the child support income to be \$298. Claimant testified that her monthly unearned income/child support income is \$150. See Request for Hearing, Exhibit 1. Claimant testified that her child support income reduced effective September 2013. Claimant testified that she began to receive \$65 every two weeks.

For child support income, the Department uses the average of child support payments received in the past three calendar months, unless changes are expected. BEM 505, p. 3. The Department includes the current month if all payments expected for the month have been received. BEM 505, p. 3. The Department does not include amounts that are unusual and not expected to continue. BEM 505, p. 3.

The Department can also do a one month projection if the past three months' child support is not a good indicator of future payments. BEM 505, p. 4. The Department calculates an expected monthly amount for the benefit month based on available information and discussion with the client. BEM 505, p. 4.

Based on the foregoing information and evidence, the Department improperly calculated Claimant's unearned income (child support) in accordance with Department policy. First, a review of the child support income results in a different amount than what the Department presented. When all three amounts are added together and divided by 3, it is found that the average child support income is \$281. The budget indicated an unearned income amount of \$298. Thus, the Department will have to recalculate the unearned income. Also, in lieu of Claimant's testimony that the child support income has changed, the Department can do a one month projection if the past three months' child support is not a good indicator of future payments. BEM 505, p. 4. Nevertheless, the Department did not properly calculate the unearned income.

Additionally, Claimant's hearing request indicated that she has monthly medical expenses in the amount of \$90 and that it should be applied as a deduction. See Exhibit 1. For groups with one or more SDV member, the Department allows medical expenses for the SDV member(s) that exceed \$35. See BEM 554 (July 2013), p. 1. Because Claimant does not have any SDV members, she is not eligible for the medical deduction. BEM 554, p. 1.

It should be noted that the Department applied the appropriate \$190 FAP standard deduction for a group size of five. See RFT 255 (October 2013), p. 1. The Department also applied the appropriate \$553 heat and utility standard. RFT 255, p. 1. Finally, Claimant did not dispute that her shelter expense was \$800 monthly. See Exhibit 1.

In summary, the Department did not act properly when it improperly calculated Claimant's earned and unearned income in accordance with Department policy. The Department will recalculate her FAP benefits effective October 1, 2013, ongoing.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with Department policy when it improperly calculated Claimant's FAP benefits effective October 1, 2013, ongoing.

Accordingly, the Department's FAP decision is REVERSED.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Begin recalculating the FAP budget for October 1, 2013, ongoing, in accordance with Department policy;
2. Issue supplements to Claimant for any FAP benefits she was eligible to receive but did not from October 1, 2013, ongoing; and
3. Notify 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: November 12, 2013

Date Mailed: November 12, 2013

NOTICE OF APPEAL: 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.

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).

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]