

**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.: 2014-2949
Issue No.: 2000; 3019
Case No.: ██████████
Hearing Date: November 6, 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 6, 2013, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department or DHS) included ██████████ Assistant Payment Worker.

ISSUE

Did the Department properly close Claimant's Food Assistant Program (FAP) benefits effective October 1, 2013, ongoing, due to the net income exceeding the limits?

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. See Exhibit 1.
2. In September 2013, the Department processed Claimant's Redetermination and budgeted the household income using the thirty days prior to the Redetermination.
3. On September 20, 2013, the Department sent Claimant a Notice of Case Action notifying her that her FAP benefits would close effective October 1, 2013, ongoing, due to her net income exceeding the limits. See Exhibit 1.

4. On October 2, 2013, Claimant filed a hearing request, protesting the FAP case closure and Medical Assistance (MA) case closure. See 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 also requested a hearing disputing the closure of her MA benefits. See Exhibit 1. However, it was discovered during the hearing that Claimant's Transitional MA coverage (TMA) never closed. See Eligibility Summary, Exhibit 1. Thus, Claimant did not dispute her MA benefits because there was no loss of benefits. See BAM 600 (July 2013), pp. 3-5. Claimant's MA Request for Hearing is hereby DISMISSED.

In this case, Claimant was an ongoing recipient of FAP benefits. On September 20, 2013, the Department sent Claimant a Notice of Case Action notifying her that her FAP benefits would close effective October 1, 2013, ongoing, due to her net income exceeding the limits. See Exhibit 1. The Department denies the FAP benefits when the income exceeds the maximum monthly net income. See BEM 556 (July 2013), p. 5. RFT 250 indicates the FAP income limits. See RFT 250 (October 2013), p. 1.

At the hearing, it was not disputed that Claimant's group size is four and there are no senior/disabled/disabled veteran (SDV) members. See BEM 554 (July 2013), p. 1. Also, the Department presented Claimant's Budget Summary from the Notice of Case Acton in substitution of an October 2013 FAP budget. 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. 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.

The Department uses the past income to prospect income for the future unless changes are expected. BEM 505, p. 5. The Department uses income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month. BEM 505, p. 5. The Department discards a pay from the past 30 days if it is unusual and does not reflect the normal, expected pay amounts. BEM 505, p. 5.

The Department can use income from the past 60 or 90 days for fluctuating or irregular income, if: 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. BEM 505, pp. 5-6.

The Department calculated the gross earned income to be \$3,838. See Exhibit 1. The Department calculated this amount based on the Claimant's submitted pay stubs. The pay stubs are described as follows: pay date on 8/2/13 in the amount of \$638; pay date on 8/16/13 in the amount of \$836; pay date on 8/23/13 in the amount of \$836; and pay date on 8/30/13 in the amount of \$1,273.25. See Exhibit 1. It should be noted that each pay date included overtime hours. See Exhibit 1. The Department also testified that Claimant's husband is paid weekly and the pay stub for 8/9/13 was not present. Thus, the Department subtracted the year to date pays of 8/16/13 and 8/2/13 to obtain her regular gross pay amount for 8/9/13. The Department testified that this amount was \$880. The Department also testified that it did not include an overtime calculation in the 8/9/13 pay stub. When the Department converts the 5 weekly pay dates to a standard monthly amount, the result is a total gross income of \$3,838. See Exhibit 1.

It should be noted that a review of the Department's calculation of \$880 on 8/9/13 is incorrect. Instead, the appropriate gross pay should have been \$440. Nevertheless, the Department testified that even if \$440 was used in lieu of \$880, Claimant would still be ineligible for FAP benefits.

Claimant disagreed with the calculation of the gross earned income. Claimant's main argument was that the Department should have excluded the overtime pay. A review of the pay stubs indicated that the overtime pay ranged from \$198 to \$833.25 for the month of August 2013. See Exhibit 1. Claimant testified that her husband earns \$11.00 an hour, works approximately 40 hours a week, and is paid weekly. Claimant emphasized that her husband is not guaranteed 40 hours a week. Moreover, Claimant presented a letter from her husband's employer dated October 15, 2013, which stated that he is a full-time employee. See Exhibit A. Moreover, the employer letter stated that he works 40 hours per week and occasionally has overtime; however, there is no guarantee of overtime hours and no guarantee of 40 hours either. See Exhibit A. Finally, the letter stated that his weekly gross pay is \$440 per week. See Exhibit A. Even though this letter is dated after the Notice of Case Action/Redetermination, Claimant testified that she notified the Department of the above information beforehand. The Department testified that it was aware of the overtime issues; however, had to calculate the gross earned income on the pay stubs submitted. The Department

testified that each pay stub had overtime hours and that she had to include the overtime pay in the budgeting.

Based on the foregoing information and evidence, the Department improperly calculated Claimant's FAP income in accordance with Department policy. The Department discards a pay from the past 30 days if it is unusual and does not reflect the normal, expected pay amounts. BEM 505, p. 5. Claimant provided credible testimony and evidence that the Department was aware that her husband's overtime hours were occasional. The evidence presented by the Claimant is persuasive that her husband's overtime pay is unusual and does not reflect the normal, expected pay amounts. BEM 505, p. 5. Thus, the Department will recalculate Claimant's FAP income and discard any overtime pay.

The Department also calculated an unearned income (child support) in the amount of \$40, which Claimant did not dispute. See BEM 505, pp. 3-4. Also, the Department applied the appropriate \$162 standard deduction for a group size of four. See RFT 255 (October 2013), p. 1. Claimant also did not dispute her housing costs in the amount of \$850. Finally, the Department applied the appropriate \$553 heat and utility standard. See RFT 255, p. 1. Claimant, though, testified that she had water bills. However, the utility standard of \$553 (see RFT 255, p. 1.) encompasses all utilities (water, gas, electric, telephone) and is unchanged even if a client's monthly utility expenses exceed the \$553 amount. Thus, Claimant is not entitled to the excess deduction of the water bills because the heat and utility standard covers this.

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 closed Claimant's FAP benefits effective October 1, 2013, ongoing.

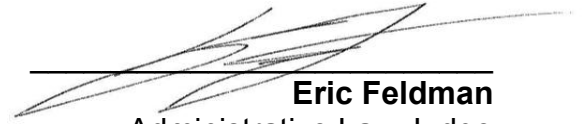
Accordingly, the Department's FAP decision is REVERSED.

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. Reinstate Claimant's FAP case as of October 1, 2013, ongoing;
2. Begin recalculating the FAP budget for October 1, 2013, ongoing, and excluding any overtime pay and in accordance with Department policy;
3. Issue supplements to Claimant for any FAP benefits she was eligible to receive but did not from October 1, 2013, ongoing; and

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

It is ALSO ORDERED that Claimant's MA Request for Hearing is DISMISSED.



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

Date Signed: November 13, 2013

Date Mailed: November 13, 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]
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