

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

**IN THE MATTER OF:**

██████████  
████████████████████  
██

Reg. No.: 2014-6119  
Issue No.: 3015; 3025  
Case No.: ██████████  
Hearing Date: November 14, 2013  
County: SSPC-East (97-98)

**ADMINISTRATIVE LAW JUDGE:** Alice C. Elkin

**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, in-person hearing was held on November 14, 2013, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included ██████████  
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**ISSUE**

Did the Department properly deny Claimant's application for Food Assistance Program (FAP) benefits?

**FINDINGS OF FACT**

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On September 19, 2013, Claimant filed an online application for FAP benefits for herself and her three minor children.
2. Claimant and her children are permanent residents who entered the United States from ██████████
3. On October 1, 2013, the Department sent Claimant a Notice of Case Action denying her application because no evidence of alien status had been submitted.

4. On October 9, 2013, Claimant filed a request for hearing disputing the Department's actions and included copies of permanent residency cards for each of the household members as well as an earnings statement from her employer.
5. After receiving Claimant's documents, the Department reinstated her application and continued to process it after concluding that, although Claimant was not eligible for FAP benefits, the minor children were.
6. On October 11, 2013, the Department sent Claimant a Notice of Case Action notifying her that her FAP application was denied because of excess income.

### **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.

Additionally, the Department concluded that Claimant's household was not eligible for FAP because of excess income. Although it was unclear at the hearing whether the group's gross income or net income rendered the group ineligible, a review of the evidence after the hearing shows that the Department concluded that Claimant's net income exceeded the net income limit.

The net income limit is based on the number of eligible FAP group members. In this case, the Department concluded that Claimant was a disqualified member of her FAP group because she failed to meet the citizenship/alien status eligibility factor. See BEM 212 (November 2012), p. 7. To receive FAP benefits, a person must be a U.S. citizen or have an acceptable alien status, and individuals who do not meet this requirement are disqualified from FAP eligibility. BEM 225 (July 2013), p. 1. Acceptable alien status includes individuals who are permanent resident aliens and meet one of the following criteria: (i) have been in the U.S. for five years; (ii) meet the Social Security Credits (SSC) requirements; (iii) have permanent residency cards (I-551) with a class code of RE, AS, SI, AM or SQ; (iv) are under 18 years of age; or (v) are lawfully residing in the United States and disabled. BEM 225, pp. 3, 5-6, 8, 9.

In this case, Claimant and her three minor children are permanent resident aliens who entered the United States [REDACTED] less than five years prior to the September 19, 2013, application. Because the children are under 18 years of age, they have acceptable alien status and are eligible FAP group members. Based on her testimony

at the hearing, Claimant does not meet any of the criteria for FAP eligibility. Accordingly, the Department acted in accordance with Department policy when it excluded her from the FAP group as a disqualified person. Thus, Claimant's FAP group had three members, Claimant's three children. Based on a FAP group size of three, the net income limit at the time of Claimant's September 19, 2013, application was \$1,591. RFT 250 (October 2012), p. 1.

The Department provided Claimant's FAP net income budget showing the calculation of Claimant's net income eligibility. The budget shows a standard deduction of \$148 and a heat and utility standard of \$575, the applicable standards available at the time of Claimant's application. RFT 255 (October 2012), p. 1. Claimant confirmed that she had no child care or child support expenses and that no one in the household was disabled. Although Claimant contended that her monthly rent was \$300, the Department pulled up Claimant's application during the hearing and confirmed that she identified only \$300 in monthly shelter expenses.

The only remaining issue in Claimant's FAP budget was the calculation of the household's income. The only income in Claimant's household was her earned income. Where a person in the FAP group is disqualified for not meeting citizenship/alien status requirements under BEM 225, the Department must budget a pro rata share of that individual's earned income in determining the remaining members' FAP eligibility and benefit amount. BEM 550 (February 2012), p. 2. Income is prorated as follows:

1. The number of eligible FAP group members is added to the number of disqualified persons that live with the group.
2. Next the disqualified/ineligible person's income is divided by the number of persons in step 1.
3. Then the result in step 2 is multiplied by the number of eligible group members.

BEM 550, pp. 2-3.

Using this formula and considering Claimant's three minor children, only three-fourths of Claimant's income would be budgeted in calculating the FAP group's eligibility and benefit amount.

The Department testified that it relied on the following pay information in calculating Claimant's gross monthly earnings: (i) \$612 paid on August 22, 2013; (ii) \$952 paid on August 29, 2013; (iii) \$731 paid on September 5, 2013; and (iv) \$807.50 paid on September 12, 2013. Multiplying the average weekly pay based on these figures by 4.3 in accordance with Department policy and multiplying the result by .75, the children's pro rata share of Claimant's income, does not result in gross monthly income of \$2,633, the gross monthly earned income reflected on the net income budget. See BEM 505

(July 2013), pp. 7-8. Thus, the Department failed to satisfy its burden of showing that it calculated the FAP group's pro rata share of Claimant's gross income and, consequently, the group's FAP eligibility, in accordance with Department policy.

It is further noted that Claimant's earning statement showed a wide range of weekly income from \$204 to \$952. 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, but 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, pp. 5-6. Whenever possible, the Department is required to seek input from the client to establish an estimate. BEM 505, p. 1.

In this case, the Department testified that it did not discuss Claimant's income with her because the amounts in her last paychecks had been increasing. However, Claimant testified that while she averaged 36 hours of weekly employment, her weekly hours fluctuated. She explained that she did not have set hours and was called to work only when her coworkers were unavailable to complete their scheduled shifts. Under these facts, the Department did not act in accordance with Department policy to the extent it relied on Claimant's pay for only 30 days prior to her application.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it denied Claimant's FAP application.


### **DECISION AND ORDER**

Accordingly, the Department's 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. Reregister Claimant's September 19, 2013, FAP application;
2. Reprocess the application;
3. Issue supplements to Claimant for any FAP benefits her group was eligible to receive but did not from September 19, 2013; and

4. Notify Claimant in writing of its decision.

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

Date Signed: November 18, 2013

Date Mailed: November 18, 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

ACE/pf

CC: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]