

**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.: 2014-7329
Issue No.: 3019; 5022
Case No.: ██████████
Hearing Date: November 21, 2013
County: Wayne (41)

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 21, 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.

ISSUES

Did the Department properly deny Claimant's State Emergency Relief (SER) application for non-heat electricity and heat?

Did the Department properly close Claimant's Food Assistance Program (FAP) benefits effective November 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 October 7, 2013, Claimant applied for SER assistance for non-heat electricity and heat. See Exhibit 1.
3. On October 7, 2013, the Department sent Claimant a SER Decision Notice, which denied Claimant's assistance request. See Exhibit 1.

4. On October 7, 2013, the Department also sent Claimant a Notice of Case Action notifying her that her FAP benefits closed effective November 1, 2013, ongoing, due to Claimant's gross income exceeding the limits. See Exhibit 1.
5. On October 18, 2013, Claimant filed a hearing request, protesting the FAP case closure and SER denial. 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.

The State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-119b. The SER program is administered by the Department (formerly known as the Family Independence Agency) pursuant to MCL 400.10 and by Mich Admin Code, R 400.7001 through R 400.7049.

SER application

On October 7, 2013, Claimant applied for SER assistance for non-heat electricity and heat. See Exhibit 1. On October 7, 2013, the Department sent Claimant a SER Decision Notice, which denied Claimant's request. See Exhibit 1. Specifically, Claimant did not meet the eligibility requirements because her application for energy services was not made during the crisis season which runs from November 1 through May 31. See Exhibit 1.

Low-income households who meet all SER eligibility requirements may receive assistance to help them with household heat and electric costs. ERM 301 (October 2013), p. 1. For energy related emergencies, the SER crisis season runs from November 1 through May 31. ERM 301, p. 1. Requests for those services will be denied June 1 through October 31. ERM 301, p. 1. The DHS-1419, Decision Notice, must be sent to the client for every energy request. ERM 301, p. 8.

Based on the foregoing information and evidence, the Department properly denied Claimant's SER request for non-heat electricity and heat in accordance with Department policy. Claimant's application was not submitted during the SER crisis season for energy related emergencies. ERM 301, p. 1. Thus, the SER application denial was proper.

FAP benefits

After the Department reviewed her SER application, it discovered that Claimant indicated that she and her daughter each had one employer. However, the Department's system indicated that Claimant only listed two of the four incomes in the household. The Department testified that Claimant had one employer and her daughter had three employers. The Department obtained the three employers from the Work Number and provided that source as exhibits. See Exhibit 1. The Department budgeted Claimant's and her daughter's three employers and determined the FAP budget exceeded the gross income standards. Thus, on October 7, 2013, the Department also sent Claimant a Notice of Case Action notifying her that her FAP benefits closed effective November 1, 2013, ongoing, due to Claimant's gross income exceeding the limits. See Exhibit 1

It is not disputed that the group size is two and there are no senior/disabled/disabled veteran (SDV) members.

BEM 556 states that if the income amount exceeds the maximum monthly net income, then deny benefits. See BEM 556 (July 2013), p. 5. RFT 250 indicated that the monthly gross income (130%) limit for a group size of two is \$1,681. See RFT 250 (October 2013), p. 1. RFT 250 also indicated that the monthly net income (100%) limit for a group size of two is \$1,293. See RFT 250, p. 1.

At the hearing, the Department presented a November 2013 FAP budget, which indicated Claimant's net income exceeded the maximum monthly net income for a group size of two. See Exhibit 1.

First, the Department calculated a gross earned income of \$3,079, which the Department testified that it comprised of all four employers. The Department presented, though, only her daughter's three employers' income information. See Exhibit 1. The Department was unable to present testimony on how it calculated the \$3,079 gross earned income. The Department only testified that it based that amount on the four employers and would have used the past thirty days of income.

The local office and client or authorized hearing representative will each present their position to the ALJ, who will determine whether the actions taken by the local office are correct according to fact, law, policy and procedure. BAM 600 (July 2013), p. 33. Both the local office and the client or authorized hearing representative must have adequate opportunity to present the case, bring witnesses, establish all pertinent facts, argue the case, refute any evidence, cross-examine adverse witnesses, and cross-examine the author of a document offered in evidence. BAM 600, pp. 33-34. The ALJ determines the facts based only on evidence introduced at the hearing, draws a conclusion of law, and determines whether DHS policy was appropriately applied. BAM 600, p. 35.

Based on the foregoing information and evidence, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it was unable to testify on how it calculated the gross earned income.

Moreover, Claimant testified that the gross earned income that the Department calculated was incorrect. Regarding Claimant's employer, she testified that she is paid every two weeks, is paid \$7.40 hourly, and earns approximately a gross income of \$800 – \$900 each month. Claimant also testified that she listed only her daughter's one employer because that was the only employer she had at the time of application. Claimant testified that her daughter worked at a seasonal job from April 2013 to October 17, 2013. Also, Claimant testified that her daughter's two other jobs had ended before the SER application. Claimant testified that the other two jobs approximately started in August 2013 and ended in September 2013. It should be noted that the Department testified that it did not request a Verification Checklist (VCL) from the Claimant regarding the reported income information.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (October 2013), p. 9. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, p. 9. Income reporting requirements include the starting or stopping of employment. See BAM 105, p. 9.

Before determining eligibility, give the client a reasonable opportunity to resolve any discrepancy between his statements and information from another source. BAM 130 (July 2013), p. 7. The Department tells the client what verification is required, how to obtain it, and the due date. BAM 130, p. 3. The Department uses the DHS-3503, VCL, to request verification. BAM 130, p. 3.

The Department also verifies income at application and at redetermination. BEM 505 (July 2013), p. 13. The Department verifies changes that result in a benefit increase or when change information is unclear, inconsistent or questionable. BEM 505, p. 13.

Based on the foregoing information and evidence, there is a discrepancy present as to Claimant and her daughter's employment. Claimant listed only one employer for her daughter, however, information from another source (i.e., Work First) indicated that her daughter had three employers. The Department should have sent a VCL to request verification of her and her daughter's employers to resolve this discrepancy. BAM 130, p. 7. Thus, the Department will request verification of Claimant's and her daughter's employment, including any starting or stopping of earned income. See BAM 105, p. 9.

It should also be noted that Claimant's housing expenses was \$503; however, the Department did not provide a shelter budget to confirm this amount. Claimant indicated her housing expenses did increase for November 2013. Other changes must be reported within 10 days after the client is aware of them. BAM 105, p. 9. These include, but are not limited to, changes in: address and shelter cost changes that result from the move. BAM 105, p. 9. Claimant must report to the Department any change in shelter costs. BAM 105, p. 9.

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 (i) acted

in accordance with Department policy when it properly denied Claimant's SER application for heat and non-heat electricity on October 7, 2013; and (ii) did not act in accordance with Department policy when it improperly closed Claimant's FAP benefits effective November 1, 2013, ongoing.

Accordingly, the Department's FAP decision is REVERSED and the Department's SER decision is AFFIRMED.

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 November 1, 2013, ongoing;
2. Initiate verification of Claimant's and her daughter's employment(s) in accordance with Department policy;
3. Begin recalculating the FAP budget for November 1, 2013, ongoing, in accordance with Department policy;
4. Issue supplements to Claimant for any FAP benefits she was eligible to receive but did not from November 1, 2013, ongoing; and
5. 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 26, 2013

Date Mailed: November 26, 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]
[REDACTED]