

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

IN THE MATTER OF:

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

Reg. No.: 2014-11100
Issue No.: 3008
Case No.: ██████████
Hearing Date: December 5, 2013
County: Oakland (02)

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 December 5, 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 effective December 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 30, 2013, Claimant submitted a Redetermination, which indicated that she had a total of four household members (Claimant and her three children). See Exhibit 1.
3. On August 30, 2013, Claimant also reported that her daughter is a full-time college student and that the only source of income is that all four members each receive Social Security benefits in the amount of \$280. See Exhibit 1.

4. On October 15, 2013, the Department sent Claimant a New Hire Client Notice in regards to her daughter and it was due back by October 25, 2013. See Exhibit 1.
5. On October 23, 2013, the Department sent Claimant a Notice of Case Action notifying her that her FAP benefits decreased to a group size of three and she would receive \$279 in benefits effective December 1, 2013, ongoing. See Exhibit 1.
6. On October 28, 2013, Claimant submitted the New Hire Client Notice, which indicated her daughter works 10 hours a week. See Exhibit 1.
7. On October 29, 2013, Claimant filed a hearing request, protesting the FAP allotment. 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.

FAP group composition

First, Claimant is disputing that her total FAP group composition should be four. However, the Department states that her daughter is an ineligible student, thus, the proper group composition should be three.

On August 30, 2013, Claimant submitted a Redetermination, which indicated that she had a total of four household members (Claimant and her three children). See Exhibit 1. On August 30, 2013, Claimant also reported that her daughter is a full-time college student and that the only source of income is that all four members each receive Social Security benefits in the amount of \$280. See Exhibit 1. On October 15, 2013, the Department sent Claimant a New Hire Client Notice in regards to her daughter and it was due back by October 25, 2013. See Exhibit 1. On October 23, 2013, the Department sent Claimant a Notice of Case Action notifying her that her FAP benefits decreased to a group size of three effective December 1, 2013, ongoing. See Exhibit 1. On October 28, 2013, Claimant submitted the New Hire Client Notice, which indicated her daughter works 10 hours a week. See Exhibit 1.

It should be noted that at the hearing Claimant agreed that her daughter is a full-time student and that she works 10 hours a week. The New Hire Client Notice indicated that

she began employment on September 24, 2013. See Exhibit 1. It should also be noted that Claimant's daughter receives \$280 in Social Security benefits due to her father's claim. See Exhibit 1.

For FAP cases, a person enrolled in a post-secondary education program may be in student status. BEM 245 (July 2013), p. 1. A person in student status must meet certain criteria in order to be eligible for assistance. BEM 245, p. 1.

For FAP cases, a person is in student status if he is:

- Age 18 through 49 and
- Enrolled half-time or more in a:
 - Vocational, trade, business, or technical school that normally requires a high school diploma or an equivalency certificate.
 - Regular curriculum at a college or university that offers degree programs regardless of whether a diploma is required.

BEM 245, p. 3.

In order for a person in student status to be eligible, they must meet one of the criteria's listed in BEM 245. BEM 245, pp. 3-5. One of those criteria's includes being employed for at least 20 hours per week and paid for such employment. BEM 245, pp. 3-4.

Based on the foregoing information and evidence, the Department properly determined Claimant's daughter is an ineligible student and thus, a non-group member. Moreover, the Department properly reflected a FAP group size of three effective December 1, 2013, ongoing, in accordance with Department policy. Claimant's daughter is enrolled in school full-time; however, she only works 10 hours a week. BEM 245 requires that the student work at least 20 hours per week and be paid for such employment to be considered in student status. BEM 245, pp. 3-4. Due to Claimant's daughter not working 10 hours a week, she is an ineligible student. BEM 245, pp. 3-4. Moreover, based on Claimant's additional testimony, she does not meet any of the additional criteria's listed in BEM 245. BEM 245, pp. 3-4.

FAP benefits

Second, Claimant is also disputing her FAP allotment. On October 23, 2013, the Department sent Claimant a Notice of Case Action notifying her that her FAP benefits decreased to \$279 effective December 1, 2013, ongoing. See Exhibit 1.

As stated above, the certified group size is three and there are also no senior/disabled/disabled veteran (SDV) member(s) in the FAP group. The Department presented as evidence the FAP budget for December 2013. See Exhibit 1.

The Department calculated a gross countable unearned income of \$1,122. See Exhibit 1. Claimant and each of her three children receive \$280 in Social Security benefits.

See BEM 503 (July 2013), pp. 28-33 and Exhibit 1. It was found that the Department also included Claimant's daughter's unearned income in the budget. As stated previously, Claimant's daughter was found to be a non-group member, however, the Department is still budgeting her \$280 in Social Security benefits.

Budgeting income for disqualified persons living with the FAP group differs based on the reason for the disqualification. BEM 550 (July 2013), p. 2. The income of a non-group member is excluded. BEM 550, p. 2.

Persons might live with the FAP group or applicant group who are not group members. BEM 212 (October 2013), p. 9. The Department does not consider their income and assets when determining the group's eligibility. BEM 212, p. 9. A person who is in student status and does not meet the criteria in BEM 245 is a non-group member. BEM 212, p. 9.

Based on the above information, the Department improperly calculated Claimant's unearned income. As stated above, Claimant's daughter does not meet the student status requirements and is therefore, a non-group member. Therefore, her income should not be considered when determining eligibility and should be excluded. See BEM 212, p. 9 and BEM 550, p. 2.

It should be noted that the Department did apply the appropriate \$151 standard deduction applicable to Claimant's group size of three. RFT 255 (October 2013), p. 1. The Department also presented an excess shelter budget from the Notice of Case Action (dated October 23, 2013), which indicated Claimant's monthly housing expense is \$176. See Exhibit 1. Claimant did not dispute this amount. Finally, the Department properly applied the appropriate heat and utility standard amount of \$553. RFT 255, p. 1.


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 determined Claimant's daughter is an ineligible student; (ii) the Department also properly reflected a FAP group composition size of three effective December 1, 2013, ongoing, in accordance with Department policy; and (iii) the Department did not act in accordance with Department policy when it improperly calculated Claimant's FAP benefits effective December 1, 2013, ongoing.

Accordingly, the Department's FAP decision is AFFIRMED IN PART with respect to properly determining Claimant's daughter is an ineligible student and the group size is three effective December 1, 2013, ongoing and REVERSED IN PART with respect to improperly calculating Claimant's FAP benefits effective December 1, 2013, ongoing.

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 December 1, 2013, ongoing, and excluding Claimant's daughter's income in accordance with Department policy;
2. Issue supplements to Claimant for any FAP benefits she was eligible to receive but did not from December 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: December 10, 2013

Date Mailed: December 10, 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.

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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]