

**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 8251
Issue No: 3008
Case No: ██████████
Hearing Date: November 25, 2013
Wayne County DHS (35)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon Claimant's request for a hearing. After due notice, a telephone hearing was held on November 25, 2013. The Claimant appeared and testified. ██████████ ES, appeared on behalf of the Department.

ISSUE

Whether the Department correctly reduced the Claimant's Food Assistance allotment based upon its earned income computation based on self-employment?

Whether the Department correctly determined the Claimant's self-employment income?

FINDINGS OF FACT

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

- (1) Claimant was receiving Food Assistance in the amount of \$327. The Claimant completed a redetermination at which time the Department determined that she was self-employed and requested verification of income and expenses.
- (2) The Claimant attempted to provide the Department with her 2012 federal income tax return and was told she could not submit the return as proof of income.
- (3) The Claimant is self-employed as a real estate agent.

- (4) The Claimant provided the Department a list of expenses, but did not provide receipts.
- (5) The Department found the Claimant to have monthly income from self-employment in the amount of \$2046.69
- (6) The Department reduced the Claimant's food assistance benefits to \$15 effective October 1, 2013.
- (7) Claimant's hearing request was received by the Department on October 25, 2013 after the 10 day period to preserve her benefit amount for food assistance. The Claimant's hearing request protested the reduction of her food assistance benefits and the calculation of her earned income and business expenses.

CONCLUSIONS OF LAW

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.

When determining eligibility for Food Assistance benefits, the household's total income must be evaluated. All earned and unearned income of each household member must be included unless specifically excluded. In this case the household had income from self-employment derived from the Claimant's self-employment as a real estate agent. BEM 502 provides the policy to be applied in determining income from self-employment. It states:

The amount of self-employment income before any deductions is called total proceeds. Countable income from self-employment equals the total proceeds **minus** allowable expenses of producing the income.

SELF-EMPLOYMENT EXPENSES

Allowed

Allowable expenses include all of the following:

- Identifiable expenses of labor, stock, raw material, seed, fertilizer, etc.

- Interest and principal on loans for equipment, real estate or income-producing property.
- Insurance premiums on loans for equipment, real estate and other income-producing property.
- Taxes paid on income-producing property.
- Transportation costs while on the job (example: fuel).
- Purchase of capital equipment.
- A child care provider's cost of meals for children. Do **not** allow costs for the provider's own children.
- Any other identifiable expense of producing self-employment income except those listed below.

Note: Allowable expenses for rental/room and board are different than those listed above; see BEM 504, ALLOWABLE RENTAL EXPENSES.

Not Allowed

Do **not** enter any of the following as self-employment expenses in Bridges:

- A net loss from a previous period
- Federal, state and local income taxes.
- Personal entertainment or other individual business expenses.
- Money set aside for retirement.
- Depreciation on equipment, real estate or other capital investments. BEM 502 PP 2, 3 (7/1/13)

In this case, the Administrative Law Judge, after a review of the evidence and testimony presented in this case, has determined that the Department improperly failed to consider the Claimant's 2012 Federal Income Tax return. The Claimant credibly testified that the Department refused to allow her to present her income tax return as proof of her income and verified expenses. Instead, the Department used various statements which the Claimant had to provide in part from the real estate company for which she provided services. These recent expenses were not specifically reviewed at the hearing

nor was the income amount as determined by the Department because it is determined that the Department should have considered the 2012 income tax return.

Based upon the evidence presented at the hearing it is determined that the Department must recalculate the income from self-employment and include in the calculation all expenses when determining income. It is noted that the Claimant's income tax return was not presented at the hearing. It is also noteworthy that the Department must still consider once it determines earned income whether the use of the 25% flat rate calculation for business expenses, rather than the expenses provided with the tax return, to determine which expense amount is more advantageous to the Claimant as required by policy. The Claimant's tax return is a verification of the income and expenses. BEM 502

Therefore, the undersigned finds that the Department incorrectly determined the Claimant's self-employment income and must recalculate the income from self-employment, and based upon the self-employment income determine the Claimant's food assistance allotment.

It is also determined that the Claimant did not file her hearing request within 10 days of the Notice Of Case Action, or October 18, 2013, and thus did not preserve her continuing receipt of her food assistance benefits. This ruling is based upon the fact that the Department mailed the notice of case action to the Claimant as of October 7, 2013 and that the Claimant testified credibly that she had no problems with receipt of her mail. Therefore, it is determined that the notice was timely mailed and that the late receipt of the hearing request to preserve continuing benefits at the \$327 level was not due to any fault or action of the Department.

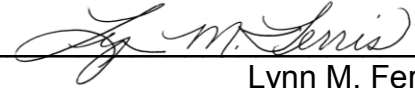
DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the Department incorrectly calculated the Claimant's income derived from self-employment as it did not allow consideration of the Claimant's 2012 federal income tax return. Its determination is therefore incorrect and the FAP benefits must be recalculated.

ACCORDINGLY IT IS ORDERED:

1. The Department shall recalculate the Claimant's self-employment income as of October 1, 2013 based upon the Claimant's 2012 Federal Income Tax return and shall utilize the income and business expenses as presented in the return. Based upon its review and calculation of earned income, the Department shall determine the food assistance allotment.

2. The Department shall issue a FAP supplement to the Claimant and FAP benefits she was otherwise entitled to receive, if any, in accordance with Department policy.



Lynn M. Ferris
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: December 3, 2013

Date Mailed: December 3, 2013

NOTICE OF APPEAL: 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).

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.

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

LMF/cl

2014-8251/LMF

cc:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]