

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201314047
Issue No.: 3015
Case No.: [REDACTED]
Hearing Date: January 10, 2013
County: Wayne DHS (17)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claimant's request for a hearing. After due notice, a telephone hearing was held on January 10, 2013 from Detroit, Michigan. Participants included the above-named claimant. [REDACTED] appeared as Claimant's translator. Participants on behalf of Department of Human Services (DHS) included [REDACTED], Specialist.

ISSUE

The issue is whether DHS properly calculated Claimant's employment income in determining Claimant's Food Assistance Program (FAP) benefit eligibility.

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 FAP benefit recipient.
2. Claimant received ongoing fluctuating employment income.
3. On 10/8/12, DHS redetermined Claimant's eligibility effective 11/2012, in part, relying on Claimant's employment income from 9/2012.
4. On 11/29/12, Claimant requested a hearing to dispute the calculation of employment income in the FAP benefit redetermination effective 11/2012.

CONCLUSIONS OF LAW

The Food Assistance Program (formerly known as the Food Stamp Program) is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). DHS administers the FAP pursuant to Michigan Compiled Laws 400.10, *et seq.*, and Michigan Administrative Code R 400.3001-3015. DHS regulations are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

Claimant testified that he wished to dispute a Medical Assistance (MA) determination and FAP benefit determination from 6/2012. Claimant brought copies of hearing requests from 6/2012 and 7/2012, which specifically raised FAP and MA benefits disputed from 6/2012. The present administrative hearing was scheduled based on Claimant's hearing request dated 11/28/12. The hearing issues are related to Claimant's hearing request, not what Claimant wishes to raise during the hearing.

Claimant wrote on the hearing request dated 11/28/12 that he disputed a decrease in FAP benefits. The case action associated with the request occurred on 10/8/12. On 10/8/12, DHS determined Claimant's FAP benefit eligibility effective 11/2012. Claimant's hearing request dated 11/28/12 failed to identify any dispute with DHS concerning MA benefits. Claimant's hearing request dated 11/28/12 failed to identify any FAP benefit dispute from 6/2012. Thus, Claimant is limited in this administrative hearing to disputing the issue of his FAP benefit eligibility effective 11/2012.

Claimant specifically objected to the amount of income budgeted by DHS in the FAP benefit redetermination. For non-child support income, DHS is to use past income to prospect income for the future unless changes are expected. BEM 505 (10/2010), p. 4. DHS is to use income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month. *Id.*

DHS converts weekly non-child support income into a 30 day period by multiplying the income by 4.3. BEM 505 (10/2010), p. 6. DHS is to count the gross employment income amount. BEM 501 (7/2012), p. 5. DHS redetermined Claimant's FAP benefit eligibility for 11/2012 on 10/8/12. DHS presented testimony that they prospected Claimant's 11/2012 by using Claimant's gross pay amounts from 9/2012. During the hearing, it was verified that DHS properly calculated an amount of \$3780 for Claimant's income.

DHS may discard a pay from the past 30 days if it is unusual and does not reflect the normal, expected pay amounts. *Id.* Claimant testified that his work hours fluctuate and that he does not always work overtime. Claimant's 9/2012 pays each included hours beyond 40/week. Discarding one of Claimant's pays because Claimant worked overtime would not appear to be appropriate because Claimant worked overtime in all four stubs relied on by DHS; in other words, overtime appeared to be the norm for Claimant. Theoretically, Claimant could have presented documentation from his employer that his 9/2012 pays were atypical; Claimant had no such verification.

There was evidence that Claimant made attempts to contact his specialist that his 9/2012 pays were higher than what he received in most months. DHS has policy addressing such a circumstance. DHS is to 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.
- (*Id.*)

As of 10/8/12, the date of the DHS redetermination, the evidence established that DHS properly relied on Claimant's income from 9/2012 to calculate Claimant's FAP benefit eligibility effective 11/2012. However, once Claimant informed DHS of a dispute concerning the way DHS calculated Claimant's income, DHS was obliged to discuss with Claimant whether a 60 or 90 day window of pays was a more accurate method to budget Claimant's income.

It was not disputed that Claimant went to the DHS office in 10/2012 to see his specialist. It was also not disputed that Claimant was turned away because of a lack of an appointment. Presumably, Claimant went to DHS to discuss the calculation of his income. Claimant conceded that he could have left a written message for his specialist, but failed to do so. Claimant also failed to schedule an appointment with his specialist. Claimant is not entitled to see his specialist at-will. As of the date Claimant was turned away by DHS, Claimant had still not reported any dispute concerning the way his income was budgeted.

Claimant testified that his spouse called his specialist to raise a dispute concerning Claimant's income calculation. The specialist conceded she spoke with Claimant's spouse, but denied that Claimant's spouse raised a dispute concerning the calculation of Claimant's income. The specialist's testimony is more reliable than Claimant's because the specialist was a party to the telephone call but Claimant was not.

It is known that Claimant's hearing request was dated 11/28/12. The hearing request specifically noted a hearing was requested because "Income is incorrect. My income is less." It is found that Claimant raised the income calculation dispute to DHS on 11/28/12. Despite the unequivocal language of the hearing request, DHS has not since updated Claimant's income.

Income decreases that result in a benefit increase must be effective no later than the first allotment issued 10 days after the date the change was reported, provided necessary verification was returned by the due date *Id.*, pp. 8-9. Because DHS has 10 days to process the reported change, Claimant cannot reasonably allege that DHS failed to timely process a change on the same date that Claimant reported the change.

Generally, clients are not entitled to an administrative remedy without a failure by DHS prior to the hearing request submission. However, because the issue was significantly related to the hearing issue and DHS was not disadvantaged by not having advanced notice of the issue, Claimant's dispute will be addressed by the below order. It is found that Claimant is entitled to a recalculation of income based on a reporting date of 11/28/12. Based on a reporting date of 11/28/12, Claimant is entitled to a benefit redetermination effective 1/2013.

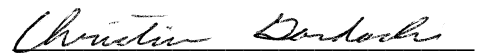
DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly determined Claimant's FAP benefit eligibility effective 11/2012. The actions taken by DHS are PARTIALLY AFFIRMED.

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS improperly processed Claimant's FAP benefit eligibility effective 1/2013. It is ordered that DHS:

- (1) redetermine Claimant's FAP benefit eligibility, effective 1/2013, by relying on Claimant's income from the three month period of 10/2012-12/2012; and
- (2) supplement Claimant for FAP benefits, if any, not issued as a result of the DHS failure to timely process Claimant's reported change.

The actions taken by DHS are PARTIALLY REVERSED.


Christian Gardocki
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: January 16, 2013

Date Mailed: January 16, 2013

NOTICE: 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 was made, within 30 days of the receipt date of the rehearing decision.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

CG/hw

cc:

