

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201325588
Issue No.: 3002, 3003
Case No.: [REDACTED]
Hearing Date: March 5, 2013
County: Wayne 17

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

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 March 5, 2013, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] (Arabic-English interpreter) and [REDACTED] (Claimant). Participants on behalf of Department of Human Services (Department) included [REDACTED] (CIS Specialist) and [REDACTED] (Assistance Payments Supervisor).

ISSUE

Did the department properly calculate Claimant's 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. Claimant received FAP benefits.
2. On October 8, 2012, the Department conducted a redetermination of Claimant's FAP eligibility which resulted in a reduction of his monthly FAP benefits to \$ [REDACTED]
3. Claimant requested a hearing to dispute the FAP calculation.
4. On January 16, 2013, Administrative Law Judge (ALJ) Christian Gardocki partially reversed the Department and ordered it to redetermine Claimant's FAP benefits effective January, 2013 "by relying on Claimant's income from the three month

period of 10/2012-12/2012” and supplement his FAP, if any, not issued as a result of the Department’s failure to timely process the reported change.

5. On January 17, 2013, the Department sent Claimant a Notice of Case Action (DHS-1605) which increased Claimant’s monthly FAP to \$ [REDACTED] effective February 1, 2013.
6. On January 24, 2013, Claimant filed a hearing request, challenging the Department’s calculation of his monthly FAP benefits.

CONCLUSIONS OF LAW

Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

The Food Assistance Program (FAP) [formerly known as the Food Stamp (FS) 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). The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, *et seq.*, and 1997 AACR 400.3001-3015.

For FAP purposes, all earned and unearned income available to a applicant or recipient is countable. BEM 500. Earned income means income received from another person or organization or from self-employment for duties that were performed for compensation or profit. Unearned income means all income that is not earned, including but not limited to funds received from the Family Independence Program (FIP), State Disability Assistance (SDA), Child Development and Care (CDC), Medicaid (MA), Social Security Benefits (RSDI/SSI), Veterans Administration (VA), Unemployment Compensation Benefits (UCB), Adult Medical Program (AMP), alimony, and child support payments. BEM 500.

The Department uses gross income when determining countable income. Gross income is the amount of income before any deductions such as taxes or garnishments. BEM 500. The amount counted may be more than the client actually receives. BEM 500.

The Department determines a group’s benefits for a month based, in part, on a prospective income determination. BEM 505. A best estimate of income expected to be received by the group during a specific month is determined and used in the budget computation. BEM 505. The Department will obtain input from the client whenever possible to establish this best estimate amount. BEM 505. The client’s understanding of how income is estimated reinforces reporting requirements and makes the client an active partner in the financial determination process. BEM 505.

A group’s financial eligibility and monthly benefit amount are determined using actual income (income that was already received) and prospected income amounts (not

received but expected). BEM 505. Only countable income is included in the determination; see BEM 500.

Each source of income is converted to a standard monthly amount, unless a full month's income will not be received. BEM 505. The Department will determine budgetable income using countable, available income for the benefit month being processed. BEM 505. For past months, the Department will use actual gross income amounts received for past month benefits, converting to a standard monthly amount, when appropriate. BEM 505. But prospective income **may** be used for past month determinations when all of the following are true: (1) income verification was requested and received; (2) payments were received by the client after verifications were submitted and (3) there are no known changes in the income being prospected. BEM 505.

The Department will use past income to prospect income for the future unless changes are expected. BEM 505. Specifically, the Department uses income from the **past 30 days** if it appears to accurately reflect what is expected to be received in the benefit month. BEM 505. The 30-day period used can begin up to 30 days before the interview date or the date the information was requested. BEM 505. But when processing a semi-annual contact, the 30-day period can begin up to 30 days before the day the DHS-1046, Semi-Annual Contact Report, is received by the client or the date a budget is completed. Any 30-day period that best reflects the client's prospective income within these guidelines can be used. BEM 505.

The Department should discard a pay from the past 30 days if it is **unusual and does not reflect the normal, expected pay amounts**. BEM 505. The Department worker should document which pay is being discarded and why. BEM 505. For example, the client worked overtime for one week and it is not expected to recur. BEM 505.

The Department will use income from the **past 60 or 90 days**¹ for fluctuating or irregular income, if: (1) the past 30 days is not a good indicator of future income, and (2) 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. BEM 505.

The Department's computer system known as "Bridges" will compute the average monthly income (and convert weekly and every other week amounts) based on the amounts and the number of months entered. BEM 505.

When the income amount changes, the Department will adjust the amount(s) being budgeted for future pay periods. BEM 505. For earned income, if the rate of pay changes, but hours are expected to remain the same, the Department will use the past hours worked times the new rate of pay to determine the amount to budget for future pay periods. BEM 505. If there is a change in expected hours, but no change in the rate of pay, the Department will use the expected hours times the rate of pay to determine the amount to budget per pay period. BEM 505. If payments in the new amount have

¹ The 60 or 90-day period used can begin up to 60 or 90 days before the interview date or the date the information was requested. BEM 505.

been received and they are accurate reflections of the future income, the Department will use them in the budget for future months. BEM 505.

All income is converted to a standard monthly amount. BEM 505. The Department will convert stable and fluctuating income that is received more often than monthly to a standard monthly amount. BEM 505. If the client is paid weekly, the Department multiplies the average weekly amount by **4.3**. BEM 505. If the client is paid every other week, the Department multiplies the average bi-weekly amount by **2.15**. BEM 505. Amounts that are received twice a month are added. BEM 505. But the Department should not convert income for the month income starts or stops if a full month's income is not expected in that month. BEM 505. The Department will use actual income received or income expected to be received in these months. BEM 505.

BEM 550 describes income budgeting policy. When the Department budgets the amount of FAP for a group, it first determines whether there is a senior², disabled person³ or a veteran member of that group. BEM 550. A non-categorically eligible Senior/Disabled/Veteran (SDV) FAP group⁴ must have income below the net income limits. BEM 550. A non-categorically eligible, non-SDV FAP group must have income below the gross and net income limits. BEM 550.

The Department will use only available, countable income to determine eligibility. BEM 550. It will always calculate income on a calendar month basis to determine eligibility and benefit amounts and use income from a month specified in this item for the benefit month being considered. BEM 550.

The Department will budget the entire amount of earned and unearned countable income. BEM 550. Gross countable earned income is reduced by a 20% earned income deduction. BEM 550. Every case is allowed the standard deduction shown in RFT 255. BEM 550. The Department documents income budgeting on either a manually-calculated or an automated FAP worksheet. BEM 550.

Here, Claimant's hearing request indicates that the Department failed to comply with ALJ Gardocki's January 17, 2013 decision. Specifically, Claimant contends the Department did not properly redetermine his FAP case using the proper paystubs from October, 2012 through December, 2012. Although the Department did not have ALJ Gardocki's written decision at the time, the Department apparently redetermined

² A "senior" is a person at least 60 years old. BEM 550 p 1.

³ A "disabled" person who receives one of the following: (1) a federal, state or local public disability retirement pension and the disability is considered permanent under the Social Security Act; (2) medicaid program which requires a disability determination by MRT or Social Security Administration; (3) Railroad Retirement **and** is eligible for Medicare or meets the Social Security disability criteria (4) a person who receives or has been certified and awaiting their initial payment for one of the following: (a) Social Security disability or blindness benefits; (b) Supplemental Security Income (SSI), based on disability or blindness, even if based on presumptive eligibility.

⁴ An SDV FAP group is one which has an SDV member. BEM 550 p 1.

Claimant's FAP case on January 14, 2013. The record also shows that the Department issued Claimant a DHS-1605 which resulted in a FAP increase of \$ [REDACTED] effective February 1, 2013. Claimant argues that the Department did not use his paystubs from months in question per ALJ Gardocki's order. The record contains a copy of Claimant's paystubs from November, 2012 and December, 2012, but nothing from October, 2012. During the hearing, the Department representative indicated that the Department used "the work number" to calculate Claimant's income presumably from October, 2012. However, the Department failed to include a copy of the work number document used to calculate his FAP in the hearing packet.

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. In the instant matter, the Department has failed to show how it determined Claimant's October, 2012 income when it calculated Claimant's FAP allotment. The Department representatives testified that they used the work number, but there was no copy of this document in the file. During the hearing, Claimant disputed the Department's calculations of his income for the months in question. Again, there was no objective documentation in the record to establish that the Department correctly calculated and correctly budgeted Claimant's October, 2012 income. Based on the lack of documentation, this Administrative Law Judge is unable to make a reasoned, informed decision regarding whether the Department properly calculated Claimant's October, 2012 income per the instructions of ALJ Gardocki. The Department only needed to include a copy of the work number in the hearing packet, but it failed to do so.

Accordingly, this Administrative Law Judge finds that the Department has failed to carry its burden of proof and did not provide information necessary to enable this ALJ to determine whether the Department followed policy as required under BAM 600.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department did not act properly.

Accordingly, the Department's FAP decision is **REVERSED**.

THE DEPARTMENT IS ORDERED TO DO THE FOLLOWING WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

Initiate a redetermination of Claimant's FAP benefit eligibility back to January, 2013. To the extent required by policy, the Department shall provide Claimant with supplemental and/or retroactive FAP.

IT IS SO ORDERED.

/s/ _____
C. Adam Purnell
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: March 12, 2013

Date Mailed: March 13, 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.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing 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.

CAP/cr

cc:

