

3. On February 14, 2013, the Department mailed Claimant a Notice of Case Action (DHS-1605) which decreased Claimant's monthly FAP allotment to \$ [REDACTED] effective March 1, 2013.
4. On February 14, 2013, the Department mailed Claimant a State Emergency Relief Decision Notice which indicated the following: (1) for heat-deliverable fuel the DHS pays \$ [REDACTED] and claimant pays \$ [REDACTED] (2) for non-heat electricity the DHS pays \$ [REDACTED] and claimant pays \$ [REDACTED] and (3) the request for property taxes was denied because the home was not in foreclosure.
5. On February 21, 2013, Claimant filed a hearing request, challenging the Department's reduction of her FAP benefits and the Department's failure to provide co-pay amounts for the SER application.

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. BEM 500. 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. BEM 500. 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. However, the amount of self-employment income before any deductions is called total proceeds. BEM 500. The gross amount of self-employment income means the amount after deducting allowable expenses from total proceeds, but before any other deductions. BEM 500.

An individual who runs his/her own business is self-employed. BEM 502. This includes but is not limited to selling goods, farming, providing direct services, and operating a facility that provides services such as adult foster care home or room and board. BEM 502.

Countable income from self-employment equals the total proceeds minus allowable expenses of producing the income. If allowable expenses exceed the total proceeds, the amount of the loss cannot offset any other income except for farm loss amounts. BEM 502.

Example: An individual operates a retail store. Total proceeds for the month are \$3,200. Allowable expenses total \$3,800. The \$600 deficit cannot be used to offset any other income. BEM 502. Allowable expenses are the higher of 25 percent of the total proceeds, or actual expenses if the client chooses to claim and verify the expenses. BEM 502.

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. BEM 502.

The Department will 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.

The Department requires proof or verifications regarding self-employment income and expenses. BEM 502. The Department will verify countable income at all of the following:

- Application, including a program add, prior to authorizing benefits.
- At member add, only the income of the member being added.
- Redetermination.
- When program policy requires a change be budgeted.

Exception: For FAP, the Department will verify income that decreases or stops. The Department will not verify starting or increasing income unless income change information is unclear, inconsistent or questionable. BEM 502.

The client has primary responsibility for obtaining verification. BEM 502. The Department may not deny assistance because an individual is unable to verify income. BEM 502. The Department must assist the client in obtaining verification when requested. BEM 502. See also BAM 130.

For all self-employment income, the Department must obtain verifications including but not limited to: business receipts, accounting or other business records, income tax returns, or other acceptable method that provides needed information. BEM 502. Clients may also provide a DHS-431, Self-Employment Statement. For self-employment expenses, the Department requires receipts. BEM 502.

SSI is a benefit administered by the Social Security Administration. BEM 503. SSI is a means-tested program that can be received based on age, disability or blindness. BEM 503.

Michigan SSI benefits include a basic federal benefit and an additional amount paid from state funds. The amount paid by the state and the payment process varies by living arrangement. BEM 503. For SSI recipients in independent living or household of another, refer to Current SSA-Issued SSI, Retroactive SSA-Issued SSI and State SSI Payments below. For SSI recipients in other living arrangements, refer to just Current SSA-Issued SSI and Retroactive SSA-Issued SSI. Bridges counts the gross amount of current SSA-issued SSI as unearned income. BEM 503.

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. For current and future months, policy indicates that the Department should prospect income using a best estimate of income expected to be received during the month (or already received). BEM 505. (Whenever possible, the Department should seek input from the client to establish an estimate). To prospect income, the Department will need to know: (1) the type of income and the frequency it is received (such as, weekly); (2) the day(s) of the week paid; (3) the date(s) paid; (4) the gross income amount received or expected to be received on each pay date. 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 changes in self-employment income, the Department will determine the **monthly** gross income to budget based on discussion with the client of what he/she expects to receive on average per month. 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.

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

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.

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

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 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.

With regard to the FAP reduction, the dispute between the parties concerns the self-employment income and expenses that were used to determine the FAP reduction. The Department contends that Claimant, during a meeting, provided the Department with new income information. Claimant completed a Self-Employment Income and Expense Statement (DHS-431) which indicated Claimant's group member (Burton L. Nelson) worked as a handyman, owned "Gramps Fix-It Shop" and earned \$ [REDACTED] for payment on van body work. Claimant's expenses listed only \$ [REDACTED] for transportation costs while on the job (not to/from work). All other expenses were identified as \$0.

Claimant, on the other hand, contends that she was confused about the DHS-431 and that the Department workers were less than cooperative with her. Claimant does not dispute the Department's calculations of her income, expenses or deductions. She simply claims that she would have included additional self-employment expenses if she had known what expenses were permitted to be used.

Here, the record evidence and testimony shows that the Department properly reduced Claimant's monthly FAP from \$ [REDACTED] to \$ [REDACTED] at the time based on the information provided by Claimant. Following the hearing, Claimant reportedly provided the Department with additional shelter expense verifications and the Department agreed to increase the shelter amount and increase the monthly FAP. However, these recent developments are not part of the record in this case and have no bearing on the Administrative Law Judge's decision. According to Claimant's monthly net income that was calculated at the time to be \$ [REDACTED] for a group size of 2, results in a \$ [REDACTED] monthly allotment. See RFT 260. Accordingly, the Department properly determined Claimant's monthly FAP allotment of \$ [REDACTED].

Claimant also requested a hearing to dispute the Department's apparent failure to pay the co-pay amount for her SER application for heat, electric and taxes.

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.

The State Emergency Relief (SER) program is established by 2004 PA 344. The SER program is administered pursuant to MCL 400.10, *et seq.*, and by 1993 AACRS R 400.7001-400.7049. Department policies are found in the State Emergency Relief Manual (ERM). SER prevents serious harm to individuals and families. SER assists applicants with safe, decent, affordable housing and other essential needs when an emergency situation arises. ERM 101.

ERM 101 sets forth the general requirements for SER. SER applicants must meet all of the following: (1) complete the application process; (2) meet financial and non-financial requirements; (3) have an emergency which threatens health or safety and can be resolved through issuance of SER; (4) take action within their ability to help themselves (i.e., obtain potential resources and/or apply for assistance); (5) not have caused the emergency (See ERM 204, Client-Caused Emergencies); and (6) cooperate in providing information about income, assets, living arrangements, and other persons living in the home. ERM 101.

The SER standard of promptness is **10 calendar days**, beginning with the date the signed SER application is received in the local office. ERM 103. The case record must include documentation for any delay in processing the application beyond the standard of promptness. ERM 103.

Clients must be informed of all verifications that are required and where to return verifications. ERM 103. The due date is **8 (eight) calendar days** beginning with the date of application. ERM 103. If the application is not processed on the application date, the deadline to return verification is eight calendar days from the date verification is requested. ERM 103. This does not change the standard of promptness date. ERM 103.

The Department uses the DHS-3503, SER Verification Checklist, to request verification and to notify the client of the due date for returning the verifications. ERM 103. The client must make a reasonable effort to obtain required verifications. ERM 103. The specialist must assist if the applicant needs and requests help. ERM 103. If neither the client nor the specialist can obtain the verifications despite a reasonable effort, the Department specialist shall use the best available information. ERM 103. If no evidence is available, the specialist must use their best judgment. ERM 103.

SER helps to prevent loss of a home if no other resources are available and the home will be available to provide safe shelter for the SER group in the foreseeable future. SER also assists with home repairs to correct unsafe conditions and restore essential services. ERM 304.

Home ownership services payments are **only** issued to save a home threatened with loss due to: (1) mortgage foreclosure; (2) land contract forfeiture; (3) tax foreclosure or sale; (4) court-ordered eviction of a mobile home from land or a mobile home park; or (5) repossession for failure to meet an installment loan payment for a mobile home.

Here, the Department contends that Claimant failed to timely provide verifications to show that Claimant had made arrangements to see that their SER heat and non-heat electricity co-pay amount was paid. Claimant states that their co-pay amount was to be provided by the Salvation Army, but the Salvation Army representative was unclear about how to make payment or how to show proof of payment. A review of the SER decision notice at issue shows that Claimant was clearly instructed that “no DHS payment will be made for any service until you provide proof that you made your payment . . . If verification of your payment is not returned by 03/06/2013 the DHS payment will not be made and you will need to reapply.” Under the comments section, the SER Decision Notice indicated, “A receipt or verification from another agency must be turned in, showing the total co-payment paid, in order for DHS to release their funding.” The record and testimony showed that the Department worker who was responsible for processing Claimant’s SER application left the office for several days from February 20, 2013 through February 27, 2013. Claimant alleges that the contact from the Salvation Army called and left several telephone messages with questions. The Department worker testified that there were no telephone messages from Claimant or her Salvation Army representative following February, 2013. Again, the verifications of SER copays were due March 6, 2013.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep’t of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). The weight and credibility of this evidence is generally for the fact-finder to determine. *Dep’t of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Moreover, it is for the fact-finder to gauge the demeanor and veracity of the witnesses who appear before him, as best he is able. See, e.g., *Caldwell v Fox*, 394 Mich 401, 407; 231 NW2d 46 (1975); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

This Administrative Law Judge finds that the Department’s position more credible than Claimant’s. In addition, the record shows that Claimant was clearly instructed how to provide verification of the co-pay amount. The SER Decision notice did not leave any questions as to how much Claimant’s co-pay amount or when and where to send the co-pay, etc., Claimant failed to follow the express language set forth on the SER Decision notice when she failed to reasonably provide the proper verifications. The Department acted properly with regard to Claimant’s SER request for heat and electric services. In addition, the Department acted properly with regard to Claimant’s SER application for home ownership services as the record shows that Claimant was not in foreclosure at the time.

Based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, the Administrative Law Judge concludes that the Department properly reduced Claimant’s FAP allotment and properly refused to approve the SER application as Claimant failed to provide verification of co-pay amounts and was not in foreclosure at the time.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department did act properly with regard to FAP and SER.

Accordingly, the Department's FAP and SER decisions are **AFFIRMED**.

IT IS SO ORDERED.

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

Date Signed: April 2, 2013

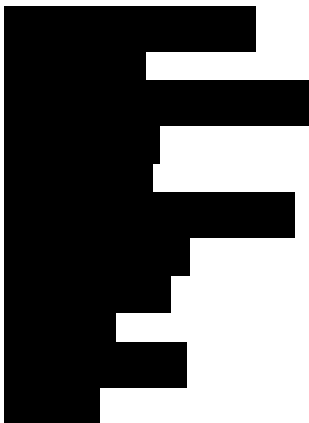
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NOTICE: Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration 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.

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