

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

IN THE MATTER OF:



Reg. No.: 201334441
Issue No.: 3003
Case No.: [REDACTED]
Hearing Date: April 8, 2013
County: Wayne (31)

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 April 8, 2013, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Assistance Payment Worker.

ISSUE

Did the Department properly close Claimant's Food Assistance Program (FAP) case January 1, 2013 on the basis that Claimant's net income exceeded the applicable FAP net income limit?

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 recipient of FAP benefits.
2. In a Settlement Order issued on November 20, 2012, the Department agreed to recalculate Claimant's FAP budget as of October 1, 2012, ongoing, and issue supplements, if necessary.
3. In connection with the Settlement Order, the Department accepted additional documentation from Claimant concerning self-employment income and expenses.

4. On December 12, 2012, the Department sent Claimant a Notice of Case Action notifying him that, based on the recalculated FAP budget, his net income exceeded the net income limit for FAP eligibility and, accordingly, his FAP case would close effective January 1, 2013.
5. On December 26, 2012, Claimant filed a request for hearing, disputing the Department's actions.

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), and Department of Human Services 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 Mich Admin Code, R 400.3001 through R 400.3015.

Claimant is a self-employed truck driver. In connection with the November 20, 2012 Settlement Order wherein the Department agreed to recalculate Claimant's FAP budget, Claimant submitted additional documentation concerning his self-employment income and expenses. After processing the new information, the Department concluded that Claimant's net income exceeded the FAP net income limit applicable to a FAP group size of one (the size of Claimant's group) and sent Claimant a December 18, 2012 Notice of Case Action informing him that his FAP case would close effective January 1, 2013 because his net income exceeded the limit. Claimant requested a hearing disputing the Department's action.

Three issues were presented at the hearing: (i) the Department's use of June 2012 income and expenses in the calculation of Claimant's FAP budget, (ii) the Department's calculation of Claimant's self-employment income, and (iii) the amount and timing of FAP benefits Claimant received pending the hearing.

Use of June 2012 Financial Information

The Department produced a FAP budget for October 2012, ongoing, showing that Claimant's self-employment income totaled \$2199 and testified that it based this calculation on Claimant's gross earned income in June 2012 and Claimant's verified allowable expenses in June 2012.

In response to Claimant's concerns regarding the Department's use of June expenses for a recalculation conducted in December 2012, the Department explained that Claimant's original hearing request that resulted in the November 20, 2012 Settlement Order involved a reduction in FAP benefits effective on October 1, 2012, based on

income information provided for June 2012. Accordingly, the June 2012 information was recalculated in connection with the Settlement Order. Although Claimant testified that there were changes in his income and that he ultimately lost his employment, there was no evidence presented that Claimant had reported these changes to the Department as required by Department policy in order for the Department to process those changes. See BAM 105 (September 1, 2012), p 7; BEM 505 (October 1, 2010), pp 7-10. Under the facts in this case, the Department properly relied on Claimant's June 2012 financial information in recalculating Claimant's FAP budget.

Self-Employment Income

To determine a client's countable income from self-employment, the Department must deduct the allowable expenses of producing the income from the total proceeds. BEM 502 (October 1, 2012), p 3. In this case, the Department concluded that Claimant had total proceeds of \$6492.98 for June 2012 and total verified actual expenses in June 2012 of \$2800.58, resulting in countable income from self-employment of \$3692.

Total Proceeds

During the course of the hearing, Claimant verified the information used by the Department to calculate his total proceeds for June 2012 (Exhibit 1, pp 8, 10, 18, 24, 26, 43, 55, 61; Exhibit 3, p 9). Claimant's total self-employment proceeds based on this information totaled \$6492.98, consistent with the Department's calculation (Exhibit 1, p 11).

Verified Allowable Expenses

Allowable expenses are the higher of (i) 25 percent of the total proceeds, or (ii) actual expenses, if the client chooses to claim and verify the expenses, up to the amount of the total proceeds. BEM 502, p 3. The Department testified that the verified allowable expenses submitted by Claimant for June 2012 totaled \$2800.58. The Department credibly testified that in calculating Claimant's self-employment expenses, it considered all of the legible documentation Claimant submitted showing his expenses for "pickup fees" and "driver qualification" identified on the invoices, fuel purchases, travel expenses for arriving at work locations and returning home from work locations, and toll fees, classifying these expenses in three categories (supplies, business insurance, and other allowable expenses).

Claimant questioned the Department's failure to include his food purchases, a shower expense and certain tools from the calculation of his expenses. The Department testified that it did not include the food and shower expenses because they were not work-related expenses and it did not include the tool expenses because they were not identified as work-related expenses on the receipts. BEM 502 (October 1, 2012), pp 3-4, defines allowable self-employment expenses to include 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 [which are not applicable in this case].

The meals and shower do not fall within any of the listed categories, and are not an identifiable expense of producing self-employment income. Thus, the Department acted in accordance with Department policy when it excluded those expenses. While tools Claimant purchased in connection with his truck and transportation services are allowable expenses, the Department testified that Claimant did not identify these items listed on the Walmart receipts at issue (Exhibit 1, pp 31, 34) as tools related to his business. Furthermore, the expenses at issue total about \$50. Because these expenses would not have affected the Department's conclusion discussed below that his income exceeded the income limit, the Department's failure to include these expenses was harmless.

FAP Budget Calculation

Because Claimant's total self-employment proceeds of \$6492.98 less his verified allowable expenses of \$2800.58 equal \$3692, Claimant's self-employment income was \$3692. Notwithstanding this calculation, the Department's FAP budget shows that Claimant had only \$2199 in self-employment income. Because this figure is to Claimant's benefit and nevertheless results in the conclusion, as discussed below, that Claimant's net income exceeds the net income limit, it will be considered in reviewing Claimant's FAP budget.

In addition to the \$2199 in self-employment income, the FAP budget showed that Claimant received \$724 in unearned income, consisting of \$710 in monthly Supplement Security Income (SSI) and the \$14 monthly State SSI Payment (SSP) benefits (based on the quarterly \$42 payment). Claimant's FAP budget included a \$148 standard deduction available to Claimant's FAP group size of one. RFT 255 (October 1, 2012), p 1. Claimant was also entitled to an earned income deduction equal to 20% of his earned income (or \$440 in this case), as indicated on the budget. BEM 550 (February 1, 2012), p 1. Claimant verified that he had no medical or child support expenses. The budget also showed that the Department considered Claimant's monthly housing expenses of \$300 and the standard heat and utility deduction of \$575 available to all FAP recipients. Based on Claimant's adjusted gross income, the Department properly concluded that Claimant was not eligible for an excess shelter deduction. RFT 255 (October 1, 2012), p 1; BEM 554 (October 1, 2012), p 1.

Based on the foregoing figures and a FAP group size of one, the Department acted in accordance with Department policy when it calculated Claimant's net income of

\$2335 and concluded that Claimant was not eligible for FAP benefits because his net income exceeded the \$931 FAP net income limit for a group size of one. BEM 556 (July 1, 2011); RFT 260 (December 1, 2012), p 21; RFT 250 (October 1, 2012), p 1.

FAP Benefits Pending Hearing

At the hearing, Claimant also contended that he was denied correct FAP benefits while his current hearing request was pending. Upon receipt of a timely hearing request, the Department must reinstate program benefits to the former level for a hearing request filed because of a negative action and the recipient must continue to receive the assistance authorized prior to the notice of negative action while waiting for the hearing decision. BAM 600 (February 1, 2013), p 18. A timely hearing request is a request received anywhere in the Department within 11 days of the effective date of a negative action, or, when the 11th calendar day is a Saturday, Sunday, holiday, or other non-workday, the request is received by the following workday. BAM 600, p 18.


In this case, the Notice of Case Action informing Claimant of the closure of his FAP case was sent on December 18, 2012, and Claimant filed a request for hearing on December 26, 2012. Thus, Claimant's hearing request was timely filed and Claimant would be entitled to continued FAP benefits. However, the Department is entitled to recover any benefits issued to Claimant pending the hearing request when the hearing decision affirms the Department's actions. See BAM 600, pp 20-21. Because the Department acted in accordance with Department policy when it closed Claimant's FAP case for excess net income, the Department would be entitled to recover any FAP benefits issued to Claimant pending the hearing. Thus, any error by the Department in failing to provide continuing FAP benefits to Claimant in this case was harmless.

Because of changes in Claimant's employment circumstances, Claimant was advised to reapply for FAP benefits.

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 acted in accordance with Department policy when it closed Claimant's FAP case for excess income.

Accordingly, for the reasons stated on the record and above, the Department's decision is AFFIRMED.


Alice C. Elkin
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 4/17/2013

Date Mailed: 4/17/2013

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

ACE/hw

cc:

