

**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.: 2013-44266
Issue No.: 3002
Case No.: ██████████
Hearing Date: May 30, 2013
County: Oakland (02)

ADMINISTRATIVE LAW JUDGE: Zainab Baydoun

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 conducted on May 30, 2013 from Detroit, Michigan. Claimant appeared and testified. Participating on behalf of the Department of Human Services (Department) was ██████████, Eligibility Specialist.

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 was an ongoing recipient of FAP benefits.
2. On April 19, 2013, the Department sent Claimant a Notice of Case Action informing her that her FAP benefits would be reduced effective May 1, 2013. (Exhibit 1)
3. On April 25, 2013, Claimant filed a hearing request disputing the Department's actions.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services 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 Mich Admin Code Rule 400.3001 through Rule 400.3015.

Additionally, on April 19, 2103, the Department sent Claimant a Notice of Case Action informing her that her FAP benefits would be reduced effective May 1, 2013 due to an increase in income. (Exhibit 1). Claimant requested a hearing to address the decrease in her FAP benefits effective May 1, 2013.

All countable earned and unearned income available to the client must be considered in determining the Claimant's eligibility for program benefits. BEM 500 (January 2013), pp. 1 – 3. The Department determines a client's eligibility for program benefits based on the client's actual income and/or prospective income. Prospective income is income not yet received but expected. BEM 505 (October 2010), p. 1. In calculating a client's earned income, the Department must determine a best estimate of income expected to be received by the client during a specific month. BEM 505, p 2. In prospecting income, the Department is required to use income from the past thirty days if it appears to accurately reflect what is expected to be received in the benefit month, discarding any pay if it is unusual and does not reflect the normal, expected pay amounts. BEM 505, p. 4. A standard monthly amount must be determined for each income source used in the budget. BEM 505, p. 6. Income received biweekly is converted to a standard amount by multiplying the average of two biweekly paychecks by the 2.15 multiplier. BEM 505, pp. 6-7.

At the hearing, the budget from the FAP EDG Net Income Results was reviewed. (Exhibit 2). The Department concluded that Claimant had earned income of \$947.00. The Department testified that in calculating Claimant's monthly earned income, it considered 30 days of income from February 2013 using the following: (1) check dated February 8, 2013 in amount of \$273.10 for 21 hours worked; and (2) check dated February 22, 2013 in amount of \$608.11 for 47 hours worked. (Exhibit 3). The Department multiplied the average of paystubs by the 2.15 standard multiplier, as Claimant gets paid biweekly. Claimant testified that she usually works about 25 hours per week and earns around \$640.00 in gross biweekly pay. The Department applied the 20% earned income deduction to Claimant's total earned income. BEM 550 (February 2012), p. 1.

The Department concluded that Claimant had unearned income of \$1,895.00 which came from three sources: unemployment compensation, spousal support and child support. The Department presented an unemployment compensation search which established that a group member received \$362.00 in weekly unemployment benefits. (Exhibit 4). According to BEM 503, the Department is to count the gross amount of unemployment benefits as unearned income. BEM 503 (May 2013), pp.25-26. A standard monthly amount must be determined for each income source used in the budget. BEM 505, p. 6. Income received weekly is converted to a standard monthly amount by multiplying the average by the four weekly amounts by the 4.3 multiplier. BEM 505, pp. 6-7. Although the Department testified that it calculated the unearned income from unemployment by multiplying the average of the weekly unemployment benefits by the 4.3 multiplier; the Department did not provide the total amount of unemployment income applied toward Claimant's total unearned income for the benefit period at issue.

Spousal support is a payment from a spouse or former spouse because of a legally enforceable obligation for financial support. It includes maintenance and alimony payments. BEM 503, p. 23. Direct spousal support is a payment received by the spouse or ex-spouse as a result of a legally binding obligation and the Department is to count the total amount as unearned income, except any portion that is court-ordered or legally obligated directly to a creditor or service provider. BEM 503, p. 23. Although the Department provided the amounts of spousal support that Claimant has received in prior months, it did not provide enough evidence to establish exactly which figures were relied on and what amount of spousal support was calculated and applied towards Claimant's total unearned income for the benefit period at issue. (Exhibit 5).

Child support is money paid by an **absent parent(s)** for the living expenses of children and is considered unearned income. The total amount of court-ordered direct support (which is support an individual receives directly from the absent parent or the Michigan State Disbursement Unit (MiSDU)) is counted as unearned income and is considered in the calculation of a client's gross unearned income. BEM 503, pp 5, 7; BEM 556 (October 2011), p 2. The Department testified that it determined the three month average for each child and added it together to calculate the total amount of child support received by Claimant, using the figures provided in the child support search. (Exhibit 5). This was not in accordance with Department policy, however. In this case, the father of the children is court ordered to pay direct support to Claimant. Because the father of the children and Claimant live together and are considered part of the same group for FAP purposes, the Department should not have included child support in the calculation of Claimant's unearned income as he is not an absent parent. The children's father is not to be treated as an absent parent for FAP budgeting purposes because he lives with the children. The money he pays Claimant in support for the children is being put right back into the household. Therefore, the Department improperly included child support as part of Claimant's gross unearned income.

Additionally, the Department testified that it applied a \$625.65 child support deduction, which is evidenced by the FAP EDG Net Income Results. (Exhibit 2). Because the children's father is the payer of child support and Claimant (a household member) is the

payee; the child support deduction is not applicable in this case. BEM 554 (October 2012), pp.4-5. Claimant should not have been granted the benefit of a child support deduction because the support went to a fellow group member. Therefore, the Department improperly applied the child support deduction.

The FAP budget shows that the Department properly applied the \$186.00 standard deduction applicable to Claimant's confirmed group size of five and the budget summary from the April 19, 2013 Notice of Case Action establishes that the \$575.00 standard heat and utility deduction available to all FAP recipients was properly applied; however, the Department was unable to explain how it calculated Claimant's housing costs of \$109.06 or what figures were relied on. (Exhibit 1, Exhibit 2); RFT 255 (October 2012), p 1; BEM 554, pp. 11-12.

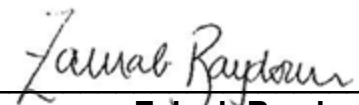
Because of errors in the Department's calculation of Claimant's unearned income and the Department's inability to explain the figures used in determining Claimant's housing costs discussed above, the Department did not satisfy its burden in establishing that it properly calculated Claimant's FAP benefits.

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 did not act in accordance with Department policy when it calculated Claimant's FAP benefits. Accordingly, the Department's decision is REVERSED.

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

1. Begin recalculating Claimant's FAP budget for May 1, 2013 ongoing in accordance with Department policy and consistent with this Hearing Decision;
2. Begin issuing supplements to Claimant for any FAP benefits that she was eligible to receive but did not from May 1, 2013, ongoing; and
3. Notify Claimant of its decision in writing in accordance with Department policy.



Zainab Baydoun
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: June 5, 2013

Date Mailed: June 5, 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 affect the substantial rights of the claimant:
 - 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

ZB/cl

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[REDACTED]
[REDACTED]
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