

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-46651
Issue Nos.: 1000, 2006, 3019
Case No.: [REDACTED]
Hearing Date: June 10, 2013
County: Wayne (82-17)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

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 June 10, 2013, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED]

ISSUES

1. Did the Department properly deny Claimant's case for Food Assistance Program (FAP) benefits effective April 8, 2013, ongoing?
2. Did the Department properly close Claimant's case for Medical Assistance (MA) effective June 1, 2013, ongoing?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material, and substantial evidence on the whole record, including testimony of witnesses, finds as material fact:

1. Claimant was an ongoing recipient of MA benefits.
2. On March 12, 2013, the Department sent Claimant a redetermination for his MA benefits which was due by April 1, 2013. Exhibit 2.
3. On March 22, 2013, Claimant submitted a completed redetermination to the Department which included his personal and business tax returns. Exhibit 2.
4. On April 8, 2013, Claimant applied for FAP benefits. Exhibit 3.

5. On April 11, 2013, the Department sent Claimant a Verification Checklist (VCL) and Verification of Employment which were both due by April 22, 2013. Exhibit 2.
6. On April 11, 2013, Claimant held his FAP application interview via telephone with the Department.
7. On April 11, 2013, the Department sent Claimant a Notice of Case Action notifying him that his FAP application was denied effective April 8, 2013, ongoing, due to his gross income exceeding limits. Exhibit 3.
8. Before the April 22, 2013 VCL due date, Claimant sent the Department the requested verification documents.
9. On April 24, 2013, the Department sent Claimant a Notice of Case Action notifying him that his MA benefits were closed effective June 1, 2013, ongoing, due to his failure to comply with the verification requirements. Exhibit 2.
10. On May 10, 2013, Claimant's spouse also submitted the verification documents in the local Department office.
11. On May 10, 2013, Claimant filed a hearing request, protesting his FIP benefits, the denial of his FAP application, and the closure of his MA benefits. Exhibit 1.

CONCLUSIONS OF LAW

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

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 42 USC 601, *et seq.* The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10, *et seq.*, and 1997 AACRS R 400.3101-3131. FIP replaced the Aid to Dependent Children (ADC) program effective October 1, 1996.

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 AACRS R 400.3001-3015

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR).

The Department (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105.

FIP Benefits

On May 10, 2013, Claimant's Request for Hearing addressed that he was disputing his FIP benefits. Exhibit 1. However, it was discovered during the hearing that Claimant did not wish to address his FIP benefits. Thus, pursuant to Michigan Administrative Code Rule 400.906(1), Claimant's FIP hearing request is hereby DISMISSED. Exhibit 1.

FAP Benefits

On April 8, 2013, Claimant applied for FAP benefits. Exhibit 3. On April 11, 2013, Claimant held his FAP application interview via telephone with the Department. On April 11, 2013, the Department sent Claimant a Notice of Case Action notifying him that his FAP application was denied effective April 8, 2013, ongoing, due to his gross income exceeding limits. Exhibit 3.

A non-categorically eligible, non-SDV FAP group must have income below the gross and net income limits. BEM 550 (February 2012), p. 1. Claimant confirmed that his FAP group size was six. A chart listed in RFT 250 is used to determine the proper FAP income limits. RFT 250 (October 2012), p. 1. The monthly gross income limit for a group size of six is \$3,356. RFT 250, p. 1. The Department uses only available, countable income to determine eligibility. BEM 550, p. 1. The Department always calculates income on a calendar month basis to determine eligibility and benefit amounts. BEM 550, p. 1.

Additionally, an asset means cash, any other personal property and real property. BEM 400 (January 2013), p. 1. For FAP cases, lump sums and accumulated benefits are assets starting the month received. BEM 500 (January 2013), p. 4; BEM 400, p. 12. However, for FAP cases, all federal, state and local earned income tax credits and refunds are excluded assets. BEM 400, pp. 12-15.

Moreover, an individual who runs his/her own business is self-employed. BEM 502 (October 2012), p. 1. Countable income from self-employment equals the total proceeds minus allowable expenses of producing the income. BEM 502, p. 3. If allowable expenses exceed the total proceeds, the amount of the loss cannot offset any other income except for farm loss amounts. BEM 502, p. 3. 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, p. 3.

At the hearing, the Department testified that it calculated Claimant's gross income based on his (i) income tax refund and (ii) self-employment earnings. The Department calculated Claimant's gross income to be \$9,923, which the Department stated exceeded the \$3,356 monthly income limit for a group size of six. See Exhibit 3 and RFT 250, p. 1. Claimant disagreed with the calculation. The Department based its

calculation on Claimant's personal and business tax returns. See Exhibit 2. Moreover, the Department testified that \$5,820 of the \$9,923 gross income was based on his 2012 tax refund. See Exhibit 2. The remainder of the gross income, the Department testified, was based on his self-employment income. See Exhibit 2. However, the Department was unable to testify on how it calculated Claimant's self-employment income.

Based on the foregoing information and evidence, the Department improperly denied Claimant's FAP application. First, the Department improperly included Claimant's income tax refund in the gross income test. An income tax refund is an asset. BEM 400, pp. 12-15. Moreover, BEM 400 states that for FAP cases, all federal, state and local earned income tax credits and refunds are excluded assets. BEM 400, pp. 12-15. Thus, the Department cannot look at income tax refunds as an asset when determining FAP eligibility. BEM 400, pp. 12-15. Second, even if the tax refund were included in the gross income, the Department was unable to establish which calendar month the tax refund was received. BEM 500, pp. 1 and 4. Third, the Department was unable to establish how it calculated Claimant's self-employment income. Thus, the Department improperly denied Claimant's FAP application effective April 8, 2013, ongoing, in accordance with Department policy.

MA Benefits

In the present case, Claimant was an ongoing recipient of MA benefits. On March 12, 2013, the Department sent Claimant a redetermination for his MA benefits which was due by April 1, 2013. Exhibit 2. On March 22, 2013, Claimant submitted a completed redetermination to the Department which included his personal and business tax returns. Exhibit 2. On April 11, 2013, the Department sent Claimant a Verification Checklist (VCL) and Verification of Employment which were both due by April 22, 2013. Exhibit 2. On April 24, 2013, the Department sent Claimant a Notice of Case Action notifying him that his MA benefits were closed effective June 1, 2013, ongoing, due to his failure to comply with the verification requirements. Exhibit 2.

Clients must cooperate with the local office in completing necessary forms for determining initial and ongoing eligibility. BAM 105 (March 2013), p. 5. For MA cases, the Department allows the client 10 calendar days to provide the verification it requests. BAM 130 (May 2012), p. 5. If the client cannot provide the verification despite a reasonable effort, the Department extends the time limit up to three times. BAM 130, p. 5. Verifications are considered to be timely if received by the date they are due. BAM 130, p. 5. Also, for MA cases, if the client indicates refusal to provide a verification or the time period given has elapsed, then policy directs that a negative action be issued. BAM 130, p. 6. Timely notice is required to reduce or terminate benefits. BAM 130, p. 6.

Additionally, a negative action is a DHS action to deny an application or to reduce, suspend or terminate a benefit. BAM 220 (November 2012), p. 1. A timely notice is mailed at least 11 days before the intended negative action takes effect. BAM 220, pp. 3-4. The action is pended to provide the client a chance to react to the proposed action. BAM 220, p. 4. The Department must delete negative actions in some situations. BAM

220, p. 10. If the requirement is met before the negative action effective date, the Department will enter the information the client provided to meet the requirement that caused the negative action. BAM 220, p. 10. The Department will then delete the negative action and reactivate the program and run eligibility and certify the results. BAM 220, p. 10.

At the hearing, Claimant testified that he spoke to his caseworker about the requested verifications on April 11, 2013. Claimant credibly testified that he received the VCL documents and sent the requested documents to the Department before the April 22, 2013, due date. Moreover, Claimant credibly testified that his wife dropped off the requested verifications at his local Department office and signed the logbook. Thus, at the hearing, the Department retrieved the logbook and found that Claimant's name appeared in the logbook on May 10, 2013. The Department notated, though, that Claimant's spouse left the description of what she dropped off blank. The Department testified that it never received any of the verification documents until today's hearing. See Exhibit A.

Based on the foregoing information and evidence, the Department improperly closed Claimant's MA benefits. First, Claimant submitted the requested verifications before the VCL due date and before the negative action date. Thus, the Department should have deleted the negative action and reactivated the program. BAM 220, pp. 1, 4, and 10. Second, Claimant credibly testified that he mailed the verification documents to the Department before the VCL due date. Moreover, Claimant's testimony was supported by the fact that his wife dropped off the documents on May 10, 2013. Thus, the Department improperly closed Claimant's MA benefits effective June 1, 2013, ongoing, in accordance with Department policy.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated above and on the record, finds that the Department (i) improperly denied Claimant's FAP application and (ii) improperly closed Claimant's MA benefits.

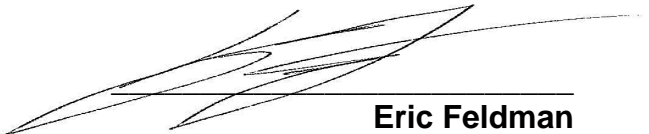
Accordingly, the Department's FAP and MA decisions are REVERSED for the reasons stated above and on the record.

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

1. The Department shall reregister the April 8, 2013, FAP application;
2. The Department shall begin reprocessing the application/recalculating the FAP budget for April 8, 2013, ongoing, in accordance with Department policy;
3. The Department shall issue supplements to Claimant for any FAP benefits he was eligible to receive but did not from June 1, 2013, ongoing;
4. The Department shall reinstate Claimant's MA case as of June 1, 2013, ongoing;

5. The Department shall issue supplements to Claimant for any MA benefits he was eligible to receive but did not from June 1, 2013, ongoing; and
6. Notify Claimant in writing of its FAP and MA decision in accordance with Department policy.

Also, based on the above discussion, it is ORDERED that Claimant's Family Independence Program (FIP) hearing request is DISMISSED pursuant to Michigan Administrative Code Rule 400.906(1).



Eric Feldman
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: June 12, 2013

Date Mailed: June 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. (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

2013-46651/EJF

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

EJF/pf

cc:

