

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-52651
Issue No.: 3003
Case No.: [REDACTED]
Hearing Date: July 11, 2013
County: Wayne DHS (35)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 July 11, 2013, from Detroit, Michigan. Participants included the above-named Claimant. Participants on behalf of the Department of Human Services (DHS) included [REDACTED] Specialist.

ISSUE

The issue is whether DHS properly calculated a child support credit in determining Claimant's Food Assistance Program (FAP) eligibility.

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 FAP benefit recipient.
2. Claimant had a \$186.50/month child support obligation.
3. On 5/28/13, DHS determined Claimant's FAP benefit eligibility, effective 6/2013, in part, based on an \$80/month child support obligation.
4. On 6/10/13, Claimant requested a hearing to dispute the amount of child support budgeted by DHS in the FAP benefit determination, effective 6/2013.

CONCLUSIONS OF LAW

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

Claimant requested a hearing to dispute a FAP benefit determination, effective 6/2013. Claimant testified that his dispute was limited to the amount of child support credited by DHS in the benefit determination.

The following child support expenses are allowed:

- The amount of court-ordered child support and arrearages paid by the household members to non-household members in the benefit month.
- Court-ordered third party payments (landlord or utility company) on behalf of a non-household member.
- Legally obligated child support paid to an individual or agency outside the household, for a child who is now a household member, provided the payments are not returned to the household.

BEM 554 (10/2012), pp. 4-5.

DHS is to not allow more than the legal obligation if the client is up-to-date on their child support payments. *Id.*, p. 5. However, if they are behind and making arrearage payments, allow the total amount paid even if it exceeds the court-ordered amount. *Id.* Current and arrearage child support expenses must be paid to be allowed. *Id.*

It was not disputed that DHS credited Claimant with \$80/month in child support payments. DHS presented Claimant's child support payment history (Exhibits 1-2) obtained from a data exchange with Friend of the Court. The history verified that Claimant paid \$80 in each of the months from 3/2013-6/2013. The history also verified additional \$7.22 payments made for child support service fees for the months of 3/2013-7/2013. DHS policy is not perfectly clear as to whether child support service fees are to be factored in the FAP determination.

There is support for excluding child support fee payments from a child support obligation. Fees could be construed as non-child support payments because the child support payee does not receive the payment.

On the other hand, the fees are an obligation related to child support and were paid by Claimant. It does not appear that Claimant has discretion to not pay child support fees. If Claimant does not have discretion to not pay the fees, the fees are more appropriately considered to be part of an ordered obligation. This supports finding that the fees should be part of the child support expense credit.

Further, an unclear policy, generally, should be interpreted against the party that drafted the policy. Applying the general rule to the present case supports finding that the child support fees should be factored in the benefit determination.

It is found that DHS erred in not factoring Claimant's child support fee payments. Thus, DHS is required to redetermine Claimant's child support obligation as it pertains to Claimant's FAP benefit determination, effective 6/2013.


Claimant testified that he is responsible for \$186.50/month in a child support obligation. It was not disputed that on 6/17/13, Claimant submitted proof to DHS that Social Security Administration reduced his RSDI benefits by \$186.50 due to a child support obligation. Technically, DHS could not have factored the obligation into the FAP benefit determination affecting 6/2013 because Claimant had not yet provided DHS with proof of the obligation. Claimant testified that he accepted 7/2013 as the appropriate benefit month to be affected. It is also found that Claimant is entitled to a \$186.50/month child support expense credit, effective 7/2013

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS improperly determined Claimant's FAP benefit eligibility. It is ordered that DHS:

- (1) redetermine Claimant's FAP benefit eligibility, for 6/2013, subject to the finding that Claimant is entitled to an \$87.22 child expense credit;
- (2) redetermine Claimant's FAP benefit eligibility, effective 7/2013, subject to the finding that Claimant is entitled to a \$186.50 child expense credit; and
- (3) supplement Claimant for any benefits improperly not issued.

The actions taken by DHS are REVERSED.


Christian Gardocki
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 7/19/2013

Date Mailed: 7/19/2013

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

CG/hw

cc:

