

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

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No.: 2013-52881
Issue No.: 2026; 3019
Case No.: [REDACTED]
Hearing Date: July 17, 2013
County: Wayne (35)

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 July 17, 2013, from Detroit, Michigan. Participants on behalf of Claimant included Claimant, and Claimant's Authorized Hearing Representative (AHR), [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED] Eligibility Specialist.

ISSUES

Did the Department properly calculate Claimant's Food Assistance Program (FAP) benefits effective July 1, 2013, ongoing?

Did the Department properly calculate Claimant's Medical Assistance (MA) deductible effective April 1, 2013, ongoing?

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 and MA benefits.
2. On an unspecified date, the Department sent Claimant a Redetermination, which was due by June 4, 2013. Exhibit 2.

3. In June 2013, Claimant submitted her redetermination packet. Exhibit 2.
4. On June 4, 2013, the Department sent Claimant a Notice of Case Action advising her that her FAP benefits were approved in the amount of \$16 effective July 1, 2013, ongoing. Exhibit 1.
5. Effective April 1, 2013, Claimant received Group 2 Spend-Down (G2S) MA coverage with a monthly \$571 deductible. Exhibit 1.
6. Effective July 1, 2013, Claimant received G2S MA coverage with a monthly \$894 deductible. Exhibit 1.
7. On June 10, 2013, Claimant filed a hearing request, protesting her FAP and MA benefits. Exhibit 1.

CONCLUSIONS OF LAW

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

FAP benefits

☒ 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.

In this case, Claimant was an ongoing recipient of FAP benefits. On an unspecified date, the Department sent Claimant a Redetermination, which was due by June 4, 2013. Exhibit 2. In June 2013, Claimant submitted her redetermination packet. Exhibit 2. On June 4, 2013, the Department sent Claimant a Notice of Case Action advising her that her FAP benefits were approved in the amount of \$16 effective July 1, 2013, ongoing. Exhibit 1.

Retirement, Survivors and Disability Insurance (RSDI) is a federal benefit administered by the Social Security Administration that is available to retired and disabled individuals, their dependents, and survivors of deceased workers. BEM 503 (May 2013), p. 21. The Department counts the gross benefit amount as unearned income. BEM 503, p. 21.

Spousal support is a payment from a spouse or former spouse because of a legally enforceable obligation for financial support. BEM 503, p. 23. It includes maintenance

and alimony payments. BEM 503, p. 23. Spousal support certified is counted only in the FIP support income test. BEM 503, p. 23. Direct spousal support counts 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. Voluntary spousal support is a payment received by the spouse or ex-spouse that is not court ordered. BEM 503, p. 23. The Department counts the total amount as unearned income. BEM 503, p. 23. It was unclear from the hearing which type of spousal support (alimony) was present.

Additionally, a group's financial eligibility and monthly benefit amount are determined using: actual income (income that was already received) or prospected income amounts (not received but expected). BEM 505 (October 2010), p. 1. Only countable income is included in the determination. BEM 505, p. 1. Each source of income is converted to a standard monthly amount, unless a full month's income will not be received. BEM 505, p. 1. The Department uses actual gross income amounts received for past month benefits, converting to a standard monthly amount, when appropriate. BEM 505, p. 2. The Department converts stable and fluctuating income that is received more often than monthly to a standard monthly amount. BEM 505, p. 6. The Department uses one of the following methods: (i) multiply weekly income by 4.3; (ii) multiply amounts received every two weeks by 2.15; or (iii) add amounts received twice a month. BEM 505, p. 6.

At the hearing, the FAP budget for the benefit period of July 2013 was reviewed. See Exhibit 1. It was not disputed that the certified group size was one. The Department calculated Claimant's unearned gross income to be \$1,443. The Department calculated Claimant's unearned gross income by adding her RSDI and alimony payments. Claimant's earns a gross RSDI amount of \$747.90. See Exhibit 1. The Department testified that Claimant also receives alimony payments of \$323.45 every two weeks. The Department would then convert Claimant's biweekly alimony amount to a standard monthly amount. If the Department takes \$323.45 and multiplies that amount by 2.15, that would result in a standard monthly amount of \$695 (\$323.45 times 2.15). See BEM 505, p. 6. Then, if the Department added the \$695 standard monthly amount for alimony payments with the gross RSDI amount of \$747.90, that results in a total gross unearned income amount of \$1,442.90. This amount resembles the \$1,443 that the FAP budget indicates.

At the hearing, Claimant is disputing her gross unearned income. Claimant's hearing request indicates that she only receives \$643 in RSDI payments. See Exhibit 1. However, this is Claimant's net income and the Department calculated her gross unearned income. See BEM 503, p. 21. Moreover, Claimant acknowledges in her hearing request that she earns \$323.45 twice a month in alimony payments. See Exhibit 1. Nonetheless, she indicated at the hearing that the alimony payments fluctuate. Claimant testified that she did indicate in her redetermination that she does receive fluctuating alimony payments.

The Department uses past income to prospect income for the future unless changes are expected. BEM 505, p. 4. 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, p. 4. However, the Department can use income from the past 60 or 90 days for fluctuating or irregular income, if: the past 30 days is not a good indicator of future income, and 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, p. 5. The Department 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, p. 5.

A review of Claimant's redetermination does indicate that she did notify the Department that her alimony payments do fluctuate. See Exhibit 2. Claimant indicated that she does earn \$323.45 biweekly, however, notated on her redetermination that "it doesn't always come as it should...But it works out by the end of the year." See Exhibit 2. Additionally, the Department testified that Claimant did supply her March and April 2013 alimony payments. The Department testified that the alimony payments that Claimant supplied did fluctuate in amounts.

Based on the foregoing information and evidence, the Department improperly calculated Claimant's FAP benefits effective July 1, 2013, ongoing. The Department was aware that Claimant's alimony payments can fluctuate. Thus, the Department is required to use Claimant's alimony income from the past 60 or 90 days for fluctuating income. See BEM 505, p. 4.

It should also be noted that Claimant did not dispute the amount of her rent which was \$460. See Notice of Case Action dated June 4, 2013, Exhibit 1. However, due to Claimant disputing her unearned income amount, it is likely that her excess shelter deduction can be affected. Nevertheless, Claimant is not disputing her rent amount.

MA benefits

☒ 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 of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105.

In this case, effective April 1, 2013, Claimant received G2S MA coverage with a monthly \$571 deductible. Exhibit 1. Also, effective July 1, 2013, Claimant received G2S MA coverage with a monthly \$894 deductible. Exhibit 1.

The local office and client or authorized hearing representative will each present their position to the ALJ, who will determine whether the actions taken by the local office are correct according to fact, law, policy and procedure. BAM 600 (February 2013), p. 28. Following the opening statement(s), if any, the ALJ directs the DHS case presenter to explain the position of the local office. BAM 600, p. 28. Both the local office and the client or authorized hearing representative must have adequate opportunity to present the case, bring witnesses, establish all pertinent facts, argue the case, refute any evidence, cross-examine adverse witnesses, and cross-examine the author of a docu-

ment offered in evidence. BAM 600, p. 28. The ALJ determines the facts based only on evidence introduced at the hearing, draws a conclusion of law, and determines whether DHS policy was appropriately applied. BAM 600, p. 30.

At the hearing, the Department provided Claimant's June and July 2013 MA budgets. See Exhibit 1. The June 2013 budget indicates a total unearned income of \$1,071. The July 2013 budget indicates a total unearned income of \$1,394. See Exhibit 1. The Department was unable to show how it calculated these amounts based on the RSDI and alimony payments. As the previous FAP analysis indicated, the Department calculated a gross unearned income of \$1,443, which neither the June nor July 2013 budgets indicated. Claimant testified that she did disagree with the calculations of these amounts as well.

Based on the foregoing evidence, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy on how it processed Claimant's MA eligibility and deductible effective April 1, 2013, ongoing.

DECISION AND ORDER

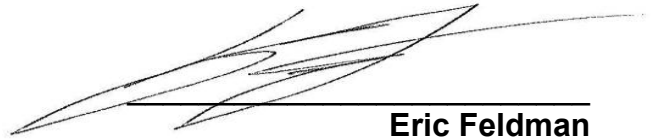
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department (i) did not properly calculate Claimant's FAP budget effective July 1, 2013, ongoing, and (ii) did not properly calculate Claimant's MA eligibility and deductible effective April 1, 2013, ongoing.

Accordingly, the Department's ☐ AMP ☐ FIP ☒ FAP ☒ MA ☐ SDA ☐ CDC decision is ☐ AFFIRMED ☒ REVERSED for the reasons stated 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. Initiate verification of Claimant's fluctuating alimony payments;
2. Begin recalculating the FAP budget for July 1, 2013, ongoing, in accordance with Department policy;
3. Issue supplements to Claimant for any FAP benefits she was eligible to receive but did not from July 1, 2013, ongoing;
4. Initiate determination of Claimant's MA eligibility effective April 1, 2013, ongoing;
5. Begin recalculating the MA budget for April 1, 2013, ongoing, in accordance with Department policy;
6. Issue supplements to Claimant for any MA benefits she was eligible to receive but did not from April 1, 2013, ongoing; and

7. Notify Claimant in writing of its FAP/MA decision in accordance with Department policy.



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

Date Signed: July 26, 2013

Date Mailed: July 26, 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

EJF/cl

cc:

[REDACTED]
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