

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201355204
Issue Nos.: 1000, 3002
Case No.: [REDACTED]
Hearing Date: July 29, 2013
County: Wayne (82-31)

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 July 29, 2013, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED]

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 is an ongoing FAP recipient.
2. In budgeting Claimant's income from new employment, the Department recalculated Claimant's FAP budget.
3. On June 11, 2013, the Department sent Claimant a Notice of Case Action notifying her that effective July 1, 2013, her monthly FAP benefits would decrease to \$304 and her monthly FIP benefits would decrease to \$165.86.

4. On June 11, 2013, the Department sent Claimant a Notice of Overissuance notifying her that the Department had overissued \$144 in FIP benefits to her for the month of June 2013.
5. On June 19, 2013, Claimant filed two hearing requests, one disputing the Department's actions concerning her FIP and FAP cases and another disputing the FIP overissuance and recoupment action.

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 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 Mich Admin Code, R 400.3101 through R 400.3131. 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 Mich Admin Code, R 400.3001 through R 400.3015.

Claimant requested a hearing disputing the calculation of her FIP and FAP monthly benefits and the Department's finding that she was subject to a FIP overissuance for June 2013. At the hearing, Claimant testified that she was not concerned about the FIP monthly benefit calculation or overissuance calculation and agreed to withdraw her hearing request with respect to that issue. Thus, the hearing request with respect to the calculation of the monthly FIP benefits and the FIP overissuance is dismissed pursuant to Claimant's request. This Hearing Decision addresses only Claimant's concern regarding the calculation of her FAP benefits.

In a June 11, 2013, Notice of Case Action, the Department notified Claimant that, effective July 1, 2013, her FAP benefits would decrease to \$304 monthly. The Department did not provide a FAP net income budget showing the calculation of Claimant's monthly FAP benefits. Therefore, the budget information in the Notice of Case Action was reviewed.

The budget in the Notice showed that Claimant's monthly gross earned income was \$633. At the hearing, the Department testified that Claimant reported her employment on April 22, 2013, and at that time submitted paystubs for the following check dates:

November 21, 2012; December 6, 2012; December 21, 2012; February 1, 2013; March 1, 2013; March 14, 2013; March 28, 2013; and April 11, 2013. On June 3, 2013, Claimant also submitted a paystub for a check date of May 10, 2013.

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 (October 1, 2010), 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. If income received in 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, the Department must use income from the past 60 or 90 days for fluctuating or irregular income. BEM 505, p. 5. Whenever possible, the Department is required to seek input from the client to establish an estimate. BEM 505, p. 2.

At the hearing, the Department could not clearly identify which paystubs it relied on in calculating Claimant's monthly gross income. Because of the fluctuations in Claimant's biweekly pay, the Department should have considered 60 to 90 days of employment income in calculating Claimant's gross monthly earned income. In this case, Claimant reported her new employment on April 22, 2013, and submitted an additional paystub on June 3, 2013, before the Department sent her the June 11, 2013, Notice of Case Action with the recalculated FAP budget. Because the change was reported on April 22, 2013, and processed on June 11, 2013, the Department would not consider Claimant's employment income between November 2012 and February 2013. A review of the remaining income received by Claimant in the six biweekly pay periods between March 1, 2013, and May 10, 2013, results in gross monthly income less than \$633. Therefore, the Department failed to satisfy its burden of showing that it calculated Claimant's gross monthly earned income in accordance with Department policy.

Claimant's FAP budget showed unearned income of \$165, which was the monthly FIP assistance Claimant received. There were two deductions listed in the Notice: the \$148 standard deduction applicable to Claimant's FAP group size of two and the \$575 heat and utility standard used to calculate the excess shelter deduction for all FAP applicants and recipients. See RFT 255 (October 2012), p. 1; BEM 554 (October 2012), p. 11; BEM 556 (July 2011), pp. 3, 4. Because the June 11, 2013, Notice of Case Action showed that Claimant was approved for CDC benefits with a Department pay percentage of 100% effective June 16, 2013, Claimant did not have any dependent care expenses that were allowable deductions to her FAP budget for July 1, 2013, ongoing. See BEM 554, p. 6 (allowing a deduction for unreimbursed dependent care expenses for a child when such care is necessary to enable a member of the FAP group to work).

The budget in the Notice showed that Claimant did not have any monthly shelter expenses that were taken into consideration in calculating her monthly FAP benefits. However, Claimant testified that she had paid monthly rent of \$400. The Department reviewed Claimant's file and confirmed that there was a lease in the file dated July 2012

that showed that Claimant's monthly rent was \$400. Clients are eligible to have their verified housing expenses considered in the calculation of their monthly FAP benefits. BEM 554, pp. 10-11. Thus, the Department did not act in accordance with Department policy when it did not consider Claimant's rent in the calculation of her monthly FAP benefits.

Because the Department could not identify how Claimant's monthly earned income was calculated and improperly excluded Claimant's shelter expenses in the calculation of her FAP benefits, the Department did not act in accordance with Department policy in calculating Claimant's monthly FAP benefits.

DECISION AND ORDER

In connection with Claimant's withdrawal of the hearing request concerning her FIP benefit and the FIP overissuance amounts, the Request for Hearing is hereby **DISMISSED**.

With respect to Claimant's hearing request concerning her FAP benefits, 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 for July 1, 2013, ongoing.

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



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

Date Signed: August 5, 2013

Date Mailed: August 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,
 - 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/pf

cc:

