

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

IN THE MATTER OF:

██████████
██████████
██████████

Reg. No.: 2013-57460
Issue No.: 1000; 2000; 3003
Case No.: ██████████
Hearing Date: August 12, 2013
County: Wayne (18)

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 August 12, 2013, from Detroit, Michigan. Participants on behalf of Claimant included Claimant and ██████████ ██████████ ██████████ ██████████. Participants on behalf of the Department of Human Services (Department) included ██████████ ██████████ Family Independence Manager, and ██████████ ██████████, Eligibility Specialist.

ISSUE

Did the Department properly calculate Claimant's Food Assistance Program (FAP) allotment effective July 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 is an ongoing recipient of FAP benefits.
2. On June 28, 2013, the Department sent Claimant a Notice of Case Action notifying her that her FAP benefits have been increased in the amount of \$85 effective July 1, 2013, ongoing. Exhibit 1.
3. On July 9, 2013, Claimant filed a hearing request, protesting her FAP benefits, Medical Assistance (MA) benefits, and the Family Independence Program (FIP) 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).

Preliminary matters

On October 25, 2012, the Department sent Claimant a Notice of Case Action notifying her that her MA benefits would close effective December 1, 2012, ongoing. See Exhibit 1. Also, on November 2, 2012, the Department sent Claimant a Notice of Case Action notifying her that her FIP application would be denied effective November 16, 2012, ongoing. See Exhibit 1.

Regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in Mich Admin Code, R 400.901 through R 400.951. Rule 400.903 provides in relevant part:

An opportunity for a hearing shall be granted to an applicant who requests a hearing because a claim for assistance is denied or is not acted upon with reasonable promptness, and to any recipient who is aggrieved by a Department action resulting in suspension, reduction, discontinuance, or termination of assistance. [R 400.903(1).]

A request for hearing must be in writing and signed by the claimant, petitioner, or authorized representative. Rule 400.904(1). Moreover, the Bridges Administrative Manual (BAM) 600 (July 2013), p. 4, provides in relevant part as follows:

The client or authorized hearing representative has *90 calendar days from the date of the written notice of case action to request a hearing*. The request must be received anywhere in DHS within the 90 days. [Emphasis added.]

In the present case, Claimant did not file a request for hearing to contest the Department's action for MA and FIP benefits until July 9, 2013. See Exhibit 1. Claimant's hearing request was, therefore, not timely filed within ninety days of the Notice of Case Actions and is, therefore, **DISMISSED** for lack of jurisdiction. Bridges Administrative Manual (BAM) 600, p 4.

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.

On June 28, 2013, the Department sent Claimant a Notice of Case Action notifying her that her FAP benefits were increased in the amount of \$85 effective July 1, 2013, ongoing. Exhibit 1.

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 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. Moreover, the Department counts the gross amount as unearned income regarding unemployment benefits. BEM 503 (May 2013), p. 26.

Moreover, the Department determines budgetable income using countable, available income for the benefit month being processed. BEM 505, p. 2. The Department uses actual gross income amounts received for past month benefits, converting to a standard monthly amount, when appropriate. BEM 505, p. 2. Except, the Department can use prospective income for past month determinations. 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.

At the hearing, a FAP budget was not presented, however, the June 28, 2013 Notice of Case Action was reviewed to determine the calculation of Claimant's FAP allotment. See Exhibit 1. It was not disputed that the certified group size was one and that the FAP group does not contain any senior/disabled/disabled veteran (SDV) members. The Department calculated Claimant's unearned income to be \$999 from her unemployment benefits. See Exhibit 1. The Department presented an unemployment compensation document to show Claimant's unemployment earnings. See Exhibit 1. The Department testified that it calculated Claimant's unearned income based on her \$456 biweekly pay in unemployment benefits. However, using the conversion for biweekly income as outlined in BEM 505; Claimant's standard monthly amount would be \$980 (\$456 biweekly pay times 2.15). BEM 505, p. 6. There is a slight difference from what the Department calculated.

Claimant testified that she only earned \$221 in unemployment benefits. Moreover, Claimant testified that she earned less in unemployment benefits. If the Department used the conversion for weekly income as outlined in BEM 505 for Claimant's alleged weekly earnings of \$221; Claimant's standard monthly amount would be \$950 (\$221 biweekly pay times 4.3). BEM 505, p. 6. However, the unemployment record does

indicate the Claimant was receiving \$228 per week in unemployment benefits for the month of June 2013. See Exhibit 1.

Based on the foregoing information and evidence, the Department improperly calculated Claimant's unearned income. The Department testified that it used Claimant's \$456 biweekly pay to calculate her unearned income. However, this amount did not result in the \$999 in unearned income that the Notice of Case Action had shown. See Exhibit 1.

It should be noted that Claimant agreed that she has \$595 in housing costs. See Exhibit 1. Also, the Department properly applied the \$148 standard deduction applicable to Claimant's group size of one. BEM 550 (February 2012), p. 1; RFT 255 (October 2012), p. 1. Also, the Department properly gave Claimant the flat utility standard to all clients responsible for utility bills. BEM 554, pp. 11-12. The utility standard of \$575 (see RFT 255, p. 1.) encompasses all utilities (water, gas, electric, telephone) and is unchanged even if a client's monthly utility expenses exceed the \$575 amount.

Also, Claimant testified that she had medical expenses to apply as a deduction. However, Claimant testified that she never presented those medical expenses to the Department until today's hearing. See BAM 105 (March 2013), pp. 7-8.

In summary, the Department did not satisfy its burden of showing that it acted in accordance with Department policy and it will have to recalculate Claimant's FAP budget effective July 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 did not properly calculate Claimant's FAP budget effective July 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. Begin recalculating the FAP budget for July 1, 2013, ongoing, in accordance with Department policy;
2. Begin issuing supplements to Claimant for any FAP benefits she was eligible to receive but did not from July 1, 2013, ongoing; and
3. Begin notifying Claimant in writing of its FAP decision in accordance with Department policy.

IT IS ALSO ORDERED that Claimant's MA and FIP hearing requests were not timely filed within ninety days of the Notice of Case Actions and is, therefore, DISMISSED for lack of jurisdiction. Bridges Administrative Manual (BAM) 600, p 4.



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

Date Signed: August 20, 2013

Date Mailed: August 20, 2013

NOTICE OF APPEAL: 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 or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

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

EJF/cl

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]