

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

IN THE MATTER OF:



Reg. No.: 20135942
Issue No.: 3003
Case No.:
Hearing Date: February 6, 2013
County: Wayne (76)

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 February 6, 2013, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of Department of Human Services (Department) included , Eligibility Specialist, and , Family Independence Manager.

ISSUE

Did the Department properly calculate Claimant's benefits for:

- | | |
|--|---|
| <input type="checkbox"/> Family Independence Program (FIP)? | <input type="checkbox"/> Adult Medical Assistance (AMP)? |
| <input checked="" type="checkbox"/> Food Assistance Program (FAP)? | <input type="checkbox"/> State Disability Assistance (SDA)? |
| <input type="checkbox"/> Medical Assistance (MA)? | <input type="checkbox"/> Child Development and Care (CDC)? |

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 applied for benefits received benefits for:

- | | |
|--|---|
| <input type="checkbox"/> Family Independence Program (FIP). | <input type="checkbox"/> Adult Medical Assistance (AMP). |
| <input checked="" type="checkbox"/> Food Assistance Program (FAP). | <input type="checkbox"/> State Disability Assistance (SDA). |
| <input type="checkbox"/> Medical Assistance (MA). | <input type="checkbox"/> Child Development and Care (CDC). |

2. On October 2, 2012, the Department notified Claimant that she was eligible for \$0 in FAP benefits for the month of October 2012 and eligible for \$4 in monthly FAP benefits effective November 1, 2012, ongoing.
3. On October 19, 2012, Claimant filed a hearing request, protesting the Department's action.

CONCLUSIONS OF LAW

Department policies are contained 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 1999 AC, R 400.3101 through Rule 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 1999 AC, R 400.3001 through Rule 400.3015.

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 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.

The Adult Medical Program (AMP) is established by 42 USC 1315, and is administered by the Department pursuant to MCL 400.10, *et seq.*

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, is established by 2004 PA 344. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.10, *et seq.*, and 2000 AACS, R 400.3151 through Rule 400.3180.

The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, the Child Care and Development Block Grant of 1990, and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The program is implemented by Title 45 of the Code of Federal Regulations, Parts 98

and 99. The Department provides services to adults and children pursuant to MCL 400.14(1) and 1999 AC, R 400.5001 through Rule 400.5015.

Additionally, on August 31, 2012, the Department notified Claimant that her FAP case would close effective October 1, 2012. The Department testified that Claimant reapplied for FAP benefits sometime in September 2012 and submitted additional expenses that had not been previously provided, in connection with the Department's calculation of her FAP budget. On October 2, 2012, the Department sent Claimant a Notice of Case Action advising her that she was approved for \$0 in FAP benefits for October 2012 and for \$4 in monthly FAP benefits effective November 2012, ongoing.

At the hearing, the Department provided a copy of Claimant's November 2012, ongoing, FAP budget showing the calculation of her monthly FAP benefits. Three issues arose during the hearing in reviewing the budget concerning the calculation of (i) Claimant's child support deduction, (ii) Claimant's child support income, and (iii) Claimant's husband's employment income.

Child Support Deduction

The budget showed that Claimant's child support expenses were \$39.08. The Department testified that it relied on the average child support paid out by Claimant's FAP group in the three months prior to the September 2012 application to calculate Claimant's child support deduction. However, in calculating expenses for FAP budget purposes, expenses should be used from the same calendar month as the month for which benefits are determined. BEM 554 (January 1, 2011), pp 2-3, 4-6. Thus, the Department did not act in accordance with Department policy when it calculated Claimant's child support deduction.

Child Support Income

The total amount of court-ordered direct support is counted as unearned income and is considered in the calculation of a client's FAP budget. BEM 503 (November 1, 2012), p 7; BEM 556 (July 1, 2011), p 2. The calculation of monthly child support income requires consideration of the past three months' received child support. BEM 505 (October 1, 2010), p 3. If payments for the past three months vary, the Department must discuss the pattern of payment with the client to determine if the pattern is expected to continue. BEM 505, p 3. If the irregular pattern is expected to continue, then the Department must use the average of these three months. BEM 505, p 3. If there are known changes that will affect the amount of the payments for the future, then the Department must not use the past three months to project future support. BEM 505, p 3. The Department must document the discussion with the client and how the amount to budget child support was determined. BEM 505, p 3.

In this case, the Department testified that it averaged Claimant's child support income for June 2012, July 2012 and August 2012. However, there were large variations in Claimant's income for those three months and no evidence that the Department discussed these variations with Claimant. Further, at the hearing, Claimant testified that

the child support income she received had changed to a consistent amount. In light of the variations in Claimant's child support income and Claimant's testimony concerning the change in received child support income, the Department did not act in accordance with Department policy when it failed to discuss this income with Claimant prior to calculating her child support income.

Calculation of Husband's Earned Income

In calculating Claimant's husband's earned income, the Department testified that it relied on a Verification of Employment (VOE) received from the husband's employer on August 29, 2012, concerning a separate matter. The VOE indicated that, beginning September 17, 2012, Claimant would receive biweekly pay of \$592 based on \$7.40 for an 80 hour pay period. Based on the hourly rate and pay period, the Department properly concluded that the husband's gross monthly earned income was \$1272.80. See BEM 505 (October 1, 2010), pp 6-7.

At the hearing, Claimant contended that her husband actually earned less than the amount indicated on the VOE and that she had provided paystubs showing his actual earned income. Income decreases that result in a benefit increase must be effective no later than the first allotment issued 10 days after the date the change was reported, provided necessary verification was returned by the due date. BAM 505, pp 8-9. In this case, however, the Department credibly testified that it had not received other documentation concerning the husband's pay until it received a February 1, 2013, verification of end of employment showing that Claimant's husband's employment had ended. In the absence of any reported changes prior to this February 1, 2013 reported change, the Department could properly rely on the information on the VOE in calculating Claimant's husband's income. BEM 501 (December 1, 2011), p 8.

Although the Department acted in accordance with Department policy when it calculated Claimant's husband's employment income, it did not act in accordance with policy when it calculated Claimant's child support income and deduction. Furthermore, upon review of the record after the hearing, it is unclear why the Department concluded that Claimant was eligible for benefits for November 2012, ongoing, but not for October 2012. Accordingly, the Administrative Law Judge concludes that the Department improperly calculated Claimant's benefits for: AMP FIP FAP MA SDA CDC.

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 act properly. did not act properly.

Accordingly, the Department's AMP FIP FAP MA SDA CDC decision is AFFIRMED 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. Begin recalculating Claimant's FAP budget for October 2012, 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 October 1, 2012, 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: February 8, 2013

Date Mailed: February 8, 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 effect 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/hw

cc:

