

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

IN THE MATTER OF:



Reg. No.: 2013-64769
Issue No.: 3008, 1017
Case No.: [REDACTED]
Hearing Date: September 19, 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 September 19, 2013, from Detroit, Michigan. Participants included the above-named claimant. Participants on behalf of Department of Human Services (DHS) included [REDACTED], Specialist.

ISSUES

The first issue is whether DHS properly denied Claimant's application for Food Assistance Program (FAP) benefits due to an alleged failure by Claimant to verify self-employment income.

The second issue is whether DHS properly denied Claimant's Family Independence Program (FIP) application due to excess income.

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On [REDACTED], Claimant applied for FAP benefits.
2. Claimant's application stated that she was self-employed as a real estate agent.
3. On [REDACTED]/13, DHS mailed Claimant a Verification Checklist (VCL) requesting proof of Claimant's employment by [REDACTED]/13.

4. The VCL sent by DHS noted that the most recent tax return was an example of acceptable verification of income.
5. Claimant timely submitted a tax transcript of her 2012 income which verified her self-employment income involving real estate and a second job as a hair stylist.
6. On [REDACTED]/13, DHS denied Claimant's application for FAP benefits due to an alleged failure by Claimant to report and verify self-employment as a hair stylist.
7. On [REDACTED]/13, Claimant applied for FIP benefits and reapplied for FAP benefits.
8. On [REDACTED]/13, DHS denied Claimant's application for FIP benefits based on excess income.
9. On [REDACTED]/13, Claimant requested a hearing to dispute the denial of FAP and FIP benefits.

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 denial of FAP benefits. It was not disputed that the denial was based on an alleged failure by Claimant to verify self-employment income.

For all programs, DHS is to use the DHS-3503, Verification Checklist to request verification. BAM 130 (5/2012), pp. 2-3. DHS must give clients at least ten days to submit verifications. *Id.*, p. 3 DHS must tell the client what verification is required, how to obtain it, and the due date. *Id.*, p. 2. For MA benefits, if the client cannot provide the verification despite a reasonable effort, DHS is to extend the time limit up to three times. *Id.*, p. 2. DHS is to send a negative action notice when:

- the client indicates refusal to provide a verification, or
- the time period given has elapsed.

Id., p. 6.

It was not disputed that DHS mailed Claimant a VCL requesting proof of self-employment. The VCL listed various items which sufficed as acceptable verifications of self-employment income; one of the listed acceptable items was Claimant's most recent tax return. Claimant returned to DHS a tax return transcript for 2012. The transcript listed two different jobs for Claimant, one involving hair styling, the second involved real

estate. Claimant's tax transcript submission caused DHS to launch an investigation. An investigator concluded that Claimant was an active resident agent for a hair stylist business.

DHS contended that the investigator's findings equated to ongoing self-employment income for Claimant and denied Claimant's application due to a failure to verify self-employment income.

Being licensed does not equate to being employed. Claimant credibly testified that she stopped styling hair several months prior to applying for FAP benefits. Claimant would have no reason to list self-employment income which she was no longer performing in response to an application question asking her to list current income. There is also no basis in DHS policy to request verification of income that stopped several months prior to an application submission.

There also exists a second reason to reverse the application denial; even accepting that Claimant performed ongoing employment as a hair stylist, Claimant complied with the VCL request. As noted above, the VCL sent by DHS noted that a recent tax return was acceptable verification of self-employment income. DHS conceded that Claimant's tax transcript complied with the request. This basis for reversing the application denial is less than ideal because it presumes that Claimant had an obligation to verify stopped employment income; Claimant had no such obligation.

Based on the presented evidence, DHS failed to establish that Claimant failed to comply with a request for self-employment income. Accordingly, the DHS denial of Claimant's FAP benefit application dated [REDACTED]/13 was improper.

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

Claimant also requested a hearing to dispute the denial of a FIP benefit application. It was not disputed that DHS denied the application due to excess income. DHS failed to present a FIP budget. Thus, it is not known what income on which DHS relied to determine that Claimant had excess income. This decision will address what DHS should have factored.

For child support income, DHS is to use the average of child support payments received in the past three calendar months, unless changes are expected. BEM 505 (10/2010), p. 3. Neither Claimant nor DHS verified Claimant's child support income for the three

months prior to the application date. DHS will be ordered to redetermine eligibility based on Claimant's child support income from █/2013-█/2013.

For non-child support income, DHS is to use the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month. *Id.*, p. 4. DHS is to 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.

Traditionally, self-employment income is of such a nature that it frequently fluctuates. There was no evidence to suggest that Claimant's self-employment income was any different. It is found that DHS should have used three months of income to determine FIP eligibility.


It was not disputed that Claimant presented DHS with verifications that she received the following self-employment income: \$400 in █/2013, \$600 in █/2013 and \$0 in █/2013. It is found that DHS should have budgeted Claimant's self-employment income at a gross average of \$333.33/month.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS improperly denied Claimant's applications for FAP and FIP benefits. DHS is ordered to perform the following actions:

- (1) reinstate Claimant's FAP application dated █/13 subject to the following findings:
 - a. Claimant timely reported and verified her self-employment income involving real estate;
 - b. Claimant reported that her self-employment income as a hair stylist ended several months prior to her FAP application submission;
- (2) reinstate Claimant's FIP benefit application dated █/13 subject to the findings that DHS is to use Claimant's child support income from █/2013-█/2013 (to be determined by DHS) and gross self-employment income of \$333.33.
- (3) initiate a supplement of 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: 9/27/2013

Date Mailed: 9/27/2013

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

CG/hw

cc:

