

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

IN THE MATTER OF:

██████████
██████████
██████████

Reg. No.: 2013-68947
Issue No.: 2000; 3003
Case No.: ██████████
Hearing Date: October 17, 2013
County: Wayne (17)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a telephone hearing was held on October 17, 2013, from Detroit, Michigan. Participants on behalf of Claimant included Claimant and ██████████. Participants on behalf of the Department of Human Services (Department or DHS) included ██████████ Family Independence Manager, and ██████████ Eligibility Specialist. Also, ██████████ was present at the hearing as Claimant's interpreter.

ISSUE

Did the Department properly close Claimant's Food Assistance Program (FAP) benefits effective September 1, 2013, ongoing, 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. Claimant was an ongoing recipient of FAP benefits. See Exhibit 1.
2. Claimant's household group size is seven. Exhibit 1.
3. Claimant is the owner and the only employee of his business. See Exhibit 1.
4. On August 9, 2013, the Department sent Claimant a Notice of Case Action notifying him that his FAP benefits would close effective September 1, 2013, ongoing, due to excess income. Exhibit 1.

5. On September 11, 2013, Claimant filed a hearing request, disputing the Department's action. Exhibit 1.

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), Department of Human Services Reference Tables Manual (RFT), and Department of Human Services Emergency Relief Manual (ERM).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food Stamp Act of 1977, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 and Mich Admin Code, R 400.3001 to .3015.

As a preliminary matter, Claimant was also disputing his Medical Assistance (MA) benefits. See Exhibit 1. However, during the hearing, Claimant testified that he is no longer disputing his MA benefits. Thus, pursuant to Mich Admin Rule 400.906(1), Claimant's MA hearing request is hereby DISMISSED.

In this case, Claimant was an ongoing recipient of FAP benefits and there are no Senior/Disabled/Veteran (SDV) members in the FAP group. See Exhibit 1. Claimant's household group size is seven. Exhibit 1. It is not disputed that Claimant is the owner and the only employee of his business. See Exhibit 1. On August 9, 2013, the Department sent Claimant a Notice of Case Action notifying him that his FAP benefits would close effective September 1, 2013, ongoing, due to excess income. Exhibit 1.

At the hearing, both parties agreed to use Claimant's U.S. Income Tax Return for an S Corporation (2012) to determine if his income exceeds the limits. See Exhibit 1.

If the net income in the FAP budget exceeds the maximum monthly net income, the Department will deny benefits. BEM 556 (October 2011), p. 4.

Individuals who run their own businesses are self-employed. BEM 502 (July 2013), p. 1. The amount of self-employment income before any deductions is called total proceeds. BEM 502, p. 2. Countable income from self-employment equals the total proceeds minus allowable expenses of producing the income. BEM 502, p. 2. If allowable expenses exceed the total proceeds, the amount of the loss cannot offset any other income except for farm loss amounts. BEM 502, p. 2.

Allowable expenses are the higher of 25 percent of the total proceeds, or actual expenses if the client chooses to claim and verify the expenses. BEM 502, p. 2.

Allowable expenses include all of the following:

- Identifiable expenses of labor, stock, raw material, seed, fertilizer, etc.

- Interest and principal on loans for equipment, real estate or income-producing property.
- Insurance premiums on loans for equipment, real estate and other income-producing property.
- Taxes paid on income-producing property.
- Transportation costs while on the job (example: fuel).
- Purchase of capital equipment.
- A child care provider's cost of meals for children. Do not allow costs for the provider's own children.
- Any other identifiable expense of producing self-employment income except those listed below.

Note: Allowable expenses for rental/room and board are different than those listed above.

BEM 502, p. 2.

The following self-employment expenses are not allowed:

- A net loss from a previous period.
- Federal, state and local income taxes.
- Personal entertainment or other individual business expenses.
- Money set aside for retirement.
- Depreciation on equipment, real estate or other capital investments.

BEM 502, p. 2.

Applying the above standards, Claimant's total self-employment income before any deductions is \$154,472. See Exhibit 1, Income Tax Return, p. 16. Then, the countable income will be determined by taking the total proceeds minus the allowable expenses, which consists of Claimant's actual expenses as identified in his Income Tax Return. See BEM 502, p. 2 and Exhibit 1, Income Tax Return, pp. 16 and 26a.

The first deduction identified in Claimant's tax return is compensation of officers in the amount of \$15,000 and \$8,208 for ordinary business income. See Exhibit 1, Income Tax Return, p. 16. These amounts are not allowable expenses as they are Claimant's own compensation and business earnings. Claimant is the only employee of his business, thus a deduction cannot be applied for his own compensation and business income.

The second deduction is Claimant's repairs and maintenance in the amount of \$30,584. See Exhibit 1, Income Tax Return, p. 16. This amount is found to be an allowable expense. This is an identifiable expense of producing self-employment income. See BEM 502, p. 3.

The third deduction is Claimant's taxes and licenses in the amount of \$4,186. See Exhibit 1, Income Tax Return, p. 16. This amount is found to be an allowable expense.

This falls under the category of taxes paid on income-producing property and an identifiable expense of producing self-employment income. See BEM 502, p. 3.

The fourth deduction is Claimant's interest in the amount of \$874. See Exhibit 1, Income Tax Return, p. 16. This amount is found to be an allowable expense. This falls under the category of interest and principal on loans for equipment, real estate or income-producing property. See BEM 502, p. 3.

The fifth deduction is Claimant's depreciation in the amount of \$30,464. See Exhibit 1, Income Tax Return, p. 16. This amount is found not to be an allowable expense. BEM 502 does not allow depreciation on equipment, real estate or other capital investments to be a self-employment expense. See BEM 502, p. 3.

The sixth deduction is Claimant's other deductions in the amount of \$65,156. See Exhibit 1, Income Tax Return, pp. 16 and 26a. However, this amount consists of smaller deductions and will be addressed below:

- Accounting in the amount of \$400. This is found to be an allowable expense.
- Meals and entertainment in the amount of \$602. This is found not to be an allowable expense because BEM 502 does not allow personal entertainment or other individual business expenses to be a self-employment expense. See BEM 502, p. 3.
- Miscellaneous in the amount of \$60. This is found to be an allowable expense.
- Parking fees and tolls in the amount of \$68. This is found to be an allowable expense.
- Supplies in the amount of \$3,228. This is found to be an allowable expense.
- Telephone in the amount of \$1,059. This is found to be an allowable expense.
- Travel in the amount of \$451. This is found to be an allowable expense.
- Fuel expense in the amount of \$58,818. This is found to be an allowable expense.
- Scale in the amount of \$421. This is found to be an allowable expense.
- DOT exam fee in the amount of \$49. This is found to be an allowable expense.

See Exhibit 1, Income Tax Return, pp. 16 and 26a and BEM 502, pp. 1-3. Thus, the above bullet points result in a total amount of \$64,554 for other deductions. The \$64,554 is found to be an allowable expense.

Based on the above information, it is found that Claimant's total actual expenses are \$100,198 (\$30,584 in repairs and maintenance plus \$4,186 in taxes and licenses plus \$874 in interest plus \$64,554 in other deductions).

Then, Claimant's total self-employment income of \$154,472 will be subtracted from the \$100,198 in allowable expenses. BEM 502, p. 2. This results in a countable income amount of \$54,274 (\$154,472 total self-employment income minus \$100,198 in allowable expenses). The countable income will then be divided by twelve, to determine his total monthly countable income. This amount is found to be \$4,522.83.

In the case, the Department presented Claimant's gross income test and FAP budget for September 2013. See Exhibit 1. Both budgets indicate that Claimant's self-employment income is \$7,529. See Exhibit 1. This amount is different that the \$4,522.83 calculated in this decision. Thus, the Department did not satisfy its burden of showing that it acted in accordance with Department policy. Specifically, the Department did not properly calculate Claimant's self-employment income. The Department will reinstate Claimant's FAP case and redetermine his FAP eligibility using the above figures.

It should be noted that Claimant's \$4,522.83 self-employment income is eligible for the 20% earned income deduction. See BEM 550 (February 2012), p. 1. The Department also applied the correct \$213 standard deduction applicable to Claimant's group size of seven. BEM 550, p. 1; RFT 255 (October 2012), p. 1.

It should also be noted that Claimant testified that the FAP group does not contain any SDV members. For groups with no SDV members, the Department uses the excess shelter maximum in RFT 255. BEM 554, p. 1; RFT 255, p. 1. RFT 255 indicates that the standard shelter maximum for non-SDV members is \$469. RFT 255, p. 1.

The Department indicated that Claimant's monthly housing expense is \$800, which he did not dispute. See Exhibit 1. The Department gives a 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. However, Claimant's shelter deduction be effected by a different earned income result.

Nevertheless, the Department will reinstate the FAP case and redetermine Claimant's eligibility. The Department will apply the \$4,522.83 as Claimant's self-employment income. However, this decision does not state that Claimant is eligible for FAP benefits. It is found that the Department failed to properly calculate Claimant's self-employment income. The Department will use the self-employment income identified above, except, it will still conduct a FAP redetermination/budget to see if Claimant is eligible for benefits.

In summary, the Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with Department policy when it improperly closed Claimant's FAP benefits effective September 1, 2013, ongoing.

DECISION AND ORDER

Accordingly, the Department's FAP decision is REVERSED.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Reinstate Claimant's FAP case as of September 1, 2013, ongoing;
2. Begin recalculating the FAP budget for September 1, 2013, ongoing, subject to applying the \$4,522.83 as Claimant's self-employment income and in accordance with Department policy;
3. Issue supplements to Claimant for any FAP benefits he was eligible to receive but did not from September 1, 2013, ongoing; and
4. Notify Claimant in writing of its FAP decision in accordance with Department policy.

It is ALSO ORDERED that Claimant's MA hearing request is DISMISSED pursuant to Mich Admin Rule 400.906(1).



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

Date Signed: October 24, 2013

Date Mailed: October 24, 2013

NOTICE OF APPEAL: 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.

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).

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]