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

IN THE MATTER OF:

[redacted]

Reg. No.: 201417249
Issue No(s).: 2001; 3001
Case No.: [redacted]
Hearing Date: January 13, 2014
County: Oakland (03)

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

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 January 13, 2014, from Detroit, Michigan. Participants on behalf of Claimant included [redacted]. Participants on behalf of the Department of Human Services (Department) included [redacted], ES and [redacted], APS.

ISSUE

Due to excess income, did the Department properly ☐ deny the Claimant's application ☒ close Claimant's case ☐ reduce Claimant's benefits for:

☐ Family Independence Program (FIP)?
☒ Food Assistance Program (FAP)?
☒ Medical Assistance (MA)?
☐ Adult Medical Assistance (AMP)?
☐ State Disability Assistance (SDA)?
☐ 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 ☒ received:
   ☐ FIP ☒ FAP ☒ MA ☐ AMP ☐ SDA ☐ CDC
   benefits.

2. On [redacted] 2013, the Department ☐ denied Claimant's application ☒ closed Claimant's case ☐ reduced Claimant's benefits due to excess income.

3. On [redacted] 2013, the Department sent Claimant/Claimant's Authorized Representative (AR) its decision.

4. On [redacted] 2013, Claimant/Claimant's Authorized Hearing Representative (AHR) filed a hearing request, protesting the Department's actions.

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, PL 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10 and 400.57a and Mich Admin Code, R 400.3101 to .3131.

☒ 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.

☒ The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 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.

☐ The State Disability Assistance (SDA) program is established by the Social Welfare Act, MCL 400.1-.119b. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.10 and Mich Admin Code, R 400.3151-.3180.

☐ The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, 42 USC 601-619, 670-679c, and 1397-1397m-5; the Child Care and Development Block Grant of 1990, PL 101-508, 42 USC 9858 to 9858q; and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193. The program is implemented by 45 CFR 98.1-99.33. The Department administers the program pursuant to MCL 400.10 and provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001-.5020.

In October 2013, the Department noted that claimant appeared to be paid exactly $1,500 per month. Based on this knowledge, the claimant's case worker began to suspect that claimant was actually the owner of a business, as this income was consistent with a regular payout or salary consistent with business ownership.

The caseworker made a request to LARA and discovered that claimant's name was on a filing endorsement that created a business named [redacted] made on [redacted] 2008. This business was an S-Corporation, based upon tax records secured by the Department.

Based on this knowledge, the Department sought the tax records for [redacted], Inc., found that the business had a total gross receipts in 2012 of $6,664,762 and immediately closed claimant's FAP and MA benefits cases on the theory that these gross receipts placed claimant's income vastly out of the allowed income for these programs. Claimant was also referred to the Office of Inspector General on the theory that the claimant had committed a fraud against the Department.

The Department's actions in this case were impermissible on numerous levels, based upon apparent misunderstandings of policy. The undersigned will address these misunderstandings individually.

First, policy at BAM 130 requires the Department to secure verification if information regarding an eligibility factor is unclear, inconsistent, incomplete or contradictory. The questionable information might be from the client or a third party.

In the current case, the questionable information was that claimant was a part owner of the [redacted].

At no point did the Department request or try to obtain verification from the claimant. Claimant's only contact with the Department was the notification that claimant's case was closing because the client was an owner of the S-Corporation. The Department did not inquire about this from the claimant, did not attempt to secure other verification, or make inquiries as to whether the claimant was still an owner 6 years after the fact, an omission that ended up being quite important. Furthermore, claimant's income appeared to be in contradiction to the tax information, at least according to the Department representatives; there was no attempt to resolve the discrepancy or to give claimant a chance to resolve the discrepancy. The caseworker in the present case merely closed the case with no explanation to the claimant and made an OIG referral without an attempt to first ferret out the facts of the case.

This, of course, assumes that the caseworker's allegations that claimant had countable income of $6,664,762 were correct. These allegations, based upon the tax records for [redacted], were not correct, and were also based on a misunderstanding of policy.

At hearing, the caseworker testified that policy required that the total gross proceeds of a small business owned by a client be considered countable income. Even after being

read the policy in question, the Department representatives insisted that policy required that total gross proceeds be considered countable income. This is not correct.

From BEM 502, pg. 3:

> The amount of self-employment income before any deductions is called total proceeds. Countable income from self-employment equals the total proceeds **minus** allowable expenses of producing the income.

Notably, policy clearly states that countable income does not mean taking the total gross proceeds from a business. Per [redacted]' 2012 tax return, the business itself had gross receipts and sales of $6,664,762. **This is not total countable income.** This amount would be considered total proceeds. Claimant would still be allowed to deduct expenses per policy. However, at no point were expenses investigated, nor were verifications sent to the claimant requesting total expenses. If the tax return in question was correct, it appeared that the business in question lost money in 2012, though the undersigned admits that the expenses claimed on the return may not all be allowable expenses for the purposes of determining self-employment income.

Regardless, the Department was in error when it simply took [redacted]' total proceeds for the year and counted that as claimant's gross income, without accounting for allowable expenses.

However, this question is largely irrelevant, because of the third mistake made by the Department. BEM 502, pg. 1:

> S-Corporations and Limited Liability Companies (LLCs) are not self-employment.

The Department made a determination that the total proceeds of the S-Corporation known as Orchard Fuels was countable self-employment income, despite the fact that self-employment income is not determined in that manner, and despite the fact that **S-Corporations are not considered self-employment.**

Per BEM 501, pg. 4, the Department is to count the income a client receives from an S-Corporation as wages, even if the client is an owner of the S-Corporation. Thus, the Department erred in counting the total proceeds of [redacted] as self-employment income, when the Department should have made a determination as to what income and wages the claimant made from the S-Corporation, and count that as wages and countable income. At no point could the $6,664,762 figure be considered income, as there was no evidence, at any point, that the claimant actually received this money as income from the S-Corporation. In fact, evidence shows that claimant received $1,500 per month from [redacted], which is exactly what he had reported to the Department as income.

In other words, according to policy and evidence, there was no discrepancy, and the Department was in error to close claimant's case and refer claimant for an OIG investigation when all facts of the case showed quite clearly that claimant had reported all relevant facts correctly.

The Department also testified that the corporations assets of $244,946 as contained in the 2012 tax return were assets owned by the claimant, and thus disqualified claimant from benefits. This is also an error.

Per BEM 400, pg. 9, an asset must be available to be countable. Available means that someone in the asset group has the legal right to use or dispose of the asset. Corporate assets do not fall under the veil of available, because assets are owned by the corporation itself, and not the individual—corporations are distinct legal entities. Black's Law Dictionary, Seventh Edition, pg. 341. Claimant would not have the legal right to use or dispose of the assets of the S-Corporation, as these assets are owned by the corporation, and not the claimant.

Such assets, legally speaking, would belong to the corporation; an attempt by the claimant to use or dispose of them without permission of the corporation would more commonly be called *embezzlement*. Black's Law Dictionary, Seventh Edition, pg. 540.

Policy recognizes corporation assets are not available when it states, with regards to business cash accounts, that the Department is to exclude a savings, share, checking or draft account used solely for the expenses of a business. BEM 400, pg. 21. Per this policy, the S-Corporations assets should have been excluded, and thus, were not a reason to close claimant's benefit case.

Finally, as alluded to above, the Department failed to ascertain whether claimant was even still an owner of the S-Corporation. Claimant submitted at hearing a purchase agreement from December 31, 2009 that shows that claimant transferred their ownership of the S-Corporation to another party.

This information would have been made clear had the Department investigated or contacted the claimant in anyway after making a determination about the initial incorporation of the [redacted].

However, the Department should have not needed to verify this information, as the tax returns secured by the Department when deciding to close this case included a K-1 filing statement (Department Exhibit 3, pg. 9) showing that claimant was no longer a principal shareholder.

Thus, it becomes clear that the Department did not investigate, or even closely inspect the documents it already had in its possession. As a result, claimant's benefit case was closed and referred claimant to the Office of the Inspector General for a fraud investigation over a corporation that claimant had no current ownership interest in *and hadn't had an ownership interest in almost 4 years.*

Furthermore, even if claimant did have an ownership interest, the evidence secured by the Department should have in no way impacted the benefit cases in question, as the claimant had correctly reported a wage being received from an S-Corporation which could not be considered self-employment or as an available asset.

The Department in the current case implemented an action that was directly contrary to policy, and without proper or diligent investigation. Claimant's case was closed, according to the testimony provided by the Department, on the basis of speculation; the Department speculated as to claimant's current business arrangements, and the Department speculated as to what policy actually directed, going so far as to admit on the record a lack of knowledge as to what was contained in BEM 502. Claimant's benefits should never have been terminated, much less a referral made to the Office of Inspector General.

Claimant's benefits must be reinstated post-haste.

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department

☐ acted in accordance with Department policy when it .
☒ did not act in accordance with Department policy when it closed claimant's MA and FAP case on the basis of his past ownership of an S-Corporation.
☐ failed to satisfy its burden of showing that it acted in accordance with Department policy when it .

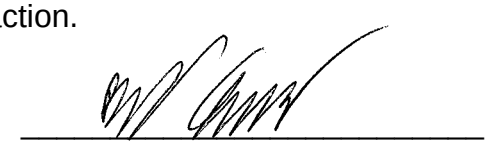
DECISION AND ORDER

Accordingly, the Department's decision is

☐ AFFIRMED.
☒ REVERSED.
☐ AFFIRMED IN PART with respect to and REVERSED IN PART with respect to .

☒ 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. Remove the negative action in the current case and reinstate claimant's MA and FAP benefits retroactive to the date of negative action.



Robert J. Chavez
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 1/22/2014

Date Mailed: 1/22/2014

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

RJC/hw

cc: [redacted]