

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

IN THE MATTER OF:



Reg. No.: 2014-11425
Issue No(s): 3008; 6000
Case No.: [REDACTED]
Hearing Date: February 10, 2014
County: Oakland (2)

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 three-way telephone hearing was held on February 10, 2014, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department or DHS) included [REDACTED], Eligibility Specialist.

ISSUE

Did the Department properly calculate Claimant's Food Assistance Program (FAP) benefits effective November 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 an unspecified date, Claimant submitted his redetermination.
3. On October 25, 2013, the Department sent Claimant a Notice of Case Action notifying him that his FAP benefits were approved in the amount of \$15 effective November 1, 2013, ongoing. See Exhibit 1.
4. On October 31, 2013, Claimant filed a hearing request, protesting the allotment and the Child Development and Care (CDC) denial. See Exhibit 2.

5. On November 19, 2013, the Michigan Administrative Hearing System (MAHS) sent Claimant a Notice of Hearing, which scheduled him for a hearing on December 5, 2013. See Exhibit 2.
6. On December 3, 2013, the Administrative Law Judge sent Claimant an Order Granting Adjournment for the Claimant. See Exhibit 2.
7. On December 16, 2013, the MAHS sent Claimant a Notice of Hearing, which scheduled him for a hearing on January 6, 2014. See Exhibit 2.
8. On January 9, 2014, the Administrative Law Judge sent Claimant an Order Granting Adjournment for the Claimant. See Exhibit 2.
9. On January 30, 2014, the MAHS sent Claimant a Notice of Hearing, which scheduled him for a hearing on February 10, 2014. See Exhibit 2.

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.

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.

Preliminary matter

As a preliminary matter, Claimant also requested a hearing disputing his CDC denial. See Exhibit 2. However, it was discovered during the hearing that Claimant never applied for CDC benefits. Claimant did complete a child care education verification form; however, he did not apply for such benefits. See Exhibit 1. Thus, Claimant's CDC hearing request is DISMISSED due to lack of jurisdiction. See BAM 600 (July 2013), pp. 4-5.

FAP benefits

Claimant is an ongoing recipient of FAP benefits. On an unspecified date, Claimant submitted his redetermination. On October 25, 2013, the Department sent Claimant a Notice of Case Action notifying him that his FAP benefits were approved in the amount of \$15 effective November 1, 2013, ongoing. See Exhibit 1. On October 31, 2013, Claimant filed a hearing request, protesting the FAP allotment. See Exhibit 2.

It was not disputed that the certified group size is two and that the FAP group does not contain a senior/disabled/disabled veteran (SDV) member. The Department presented the November 2013 FAP budget for review. See Exhibit 1. The Department calculated Claimant's gross earned income to be \$2,464. See Exhibit 1. Claimant disputed this amount.

At the hearing, Claimant included as an exhibit his redetermination. See Exhibit 1. The redetermination stated that his income source is self-employment and that his gross amount before deductions is \$2,293. See Exhibit 1. Moreover, Claimant notated next to the gross amount that it included \$500 monthly of vehicle expenses. See Exhibit 1. The Department testified that it included this amount in the budget and Claimant disagreed with it. However, it was also discovered during the hearing that the Department did not apply his income as self-employment income. The Department testified that Claimant also supplied pay stubs, which it recognized as normal wages. See Exhibit 1. However, Claimant testified that he is a contractor and is self-employed.

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.

Based on the above information, the Department improperly calculated Claimant's gross earned income. It is understandable that the Department processed the income as earned income based on the submitted paystubs. However, Claimant properly notified the Department in the redetermination that he is self-employed. See Exhibit 1. Thus, the Department has to initiate verification of his self-employment income effective November 1, 2013, ongoing. BEM 502, pp. 1-2.

Additionally, the Department properly applied the \$151 standard deduction applicable to Claimant's group size of two. RFT 255 (October 2013), p. 1. However, the Department appeared to not apply a dependent care deduction. The Department testified that it was reported in the redetermination. The budget indicated zero in dependent care deductions. See Exhibit 1. Claimant provided a child care verification, which the

Department acknowledged as being approximately \$166.25. See Hearing Summary, Exhibit 1.

For groups with no SDV members, the Department uses dependent care expenses. See BEM 554 (July 2013), p. 1. Based on the above information, it appears that Claimant is also eligible for dependent care expense. The Department's hearing summary acknowledged such dependent care expenses; however, the budget does not reflect it. See Exhibit 1. Therefore, the Department will also recalculate the dependent care expenses effective November 1, 2013, ongoing.

Finally, the Claimant was also disputing his shelter expenses. The Department presented an excess shelter budget from his Notice of Case Action (dated October 25, 2013), which indicated Claimant's monthly housing expense is \$0. See Exhibit 1. Claimant testified his housing expenses were \$400. A review of the redetermination indicated that Claimant did not indicate a change in address and housing expenses. See Exhibit 1. Claimant testified that he has sent in the past that verification of his shelter expenses.

Moreover, the Department testified that it did not have a verification of his shelter expenses. The Department also testified that it asked the Claimant at the time of redetermination if he has shelter expenses and it stated the Claimant said he did not. The Department testified at the pre-hearing conference that Claimant stated he had shelter expenses; however, it did not receive such verification.

The Department verifies shelter expenses at application and when a change is reported. BEM 554, p. 14. If the client fails to verify a reported change in shelter, remove the old expense until the new expense is verified. BEM 554, p. 14.

Based on the foregoing information and evidence, the Department properly calculated Claimant's shelter expenses. The Department provided credible testimony that it did not have any verification of his shelter expenses. BEM 554, p. 14. Ultimately, the Department did not have verification of his shelter expenses and Claimant did not present any evidence at the hearing of such verification being sent.

DECISION AND ORDER

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 calculated Claimant's FAP benefits in the amount of \$15 effective November 1, 2013, ongoing.

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. Begin recalculating the FAP budget for November 1, 2013, ongoing, including self-employment and dependent care expenses, in accordance with Department policy;
2. Issue supplements to Claimant for any FAP benefits he was eligible to receive but did not from November 1, 2013, ongoing; and
3. Notify Claimant in writing of its FAP decision in accordance with Department policy.

IT IS ALSO ORDERED that Claimant's CDC hearing request is DISMISSED due to lack of jurisdiction.



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

Date Signed: February 18, 2014

Date Mailed: February 18, 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.

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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/tlf

cc:

