

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

IN THE MATTER OF:



Reg. No.: 2014-24145
Issue No(s): 3008
Case No.: [REDACTED]
Hearing Date: February 20, 2014
County: Wayne (19)

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 February 20, 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) allotment effective February 1, 2014, 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. In December 2013, Claimant submitted a redetermination.
3. On January 14, 2014, the Department sent Claimant a Notice of Case Action notifying her that her FAP benefits were approved in the amount of \$15 effective February 1, 2014, ongoing. See Exhibit 1.
4. On January 22, 2014, Claimant filed a hearing request, protesting her FAP allotment. See 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.

In this case, Claimant is an ongoing recipient of FAP benefits. In December 2013, Claimant submitted a redetermination. On January 14, 2014, the Department sent Claimant a Notice of Case Action notifying her that her FAP benefits were approved in the amount of \$15 effective February 1, 2014, ongoing. See Exhibit 1.

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 February 2014 FAP budget for review. See Exhibit 1. The Department calculated Claimant's gross earned income to be \$1,847. See Exhibit 1. See BEM 505 (July 2013), pp. 1 and 6-8. Claimant did not dispute this calculation.

The Department also calculated Claimant's unearned income (child support) in the amount of \$345. See Exhibit 1. The Department presented Claimant's child support direct (court-ordered) document, which showed that she received \$331 for each month (October, November, and December 2013). See Exhibit 1. Moreover, the Department also presented her child support certified medical, which showed monthly medical payments of \$15 (October, November, and December 2013). See Exhibit 1. The Department testified that it the FAP budget included both the medical and child support in the FAP budget. Claimant testified that she only receives \$331 in child support each month and that the \$15 in medical goes to the State of Michigan.

For child support income, the Department uses the average of child support payments received in the past three calendar months, unless changes are expected. BEM 505, p. 3. The Department includes the current month if all payments expected for the month have been received. BEM 505, p. 3. Do not include amounts that are unusual and not expected to continue. BEM 505, p. 3.

Court-ordered direct support means child support payments an individual receives directly from the absent parent or the Michigan State Disbursement Unit (MiSDU). BEM 503 (January 2014), p. 8. The Department counts the total amount as unearned income, except any portion that is court-ordered or legally obligated directly to a creditor or service provider. BEM 503, pp. 8-9.

Certified support means court-ordered payments the MiSDU sends to DHS due to a child's receipt of assistance. BEM 503, p. 6. For FAP cases, the Department excludes collections retained by DHS (certified support) and court-ordered support payments the group receives after the child support certification effective date. BEM 503, p. 6.

Based on the foregoing information and evidence, the Department improperly calculated Claimant's unearned income (child support) in accordance with Department policy.

Claimant credibly testified that she only receives \$331 in child support each month, which the Department records accurately reflect regarding court-ordered direct support. See Exhibit 1. BEM 503 states to count the total amount of court-ordered direct support as unearned income. See BEM 503, pp. 8-9. Also, the Department excludes collections retained by DHS (certified support) and court-ordered support payments the group receives after the child support certification effective date. BEM 503, p. 6. Claimant received \$15 each month in child support certified medical. See Exhibit 1. As stated above, BEM 503 states to exclude collections retained by DHS (certified support)...BEM 503, p. 6. Moreover, Claimant does not receive the child support certified medical. For child support income, the Department uses the average of child support payments received in the past three calendar months, unless changes are expected. BEM 505, p. 3. Claimant only receives the \$331 in child support income. The Department should have excluded Claimant's child support certified medical from the FAP budget. BEM 503, p. 6; BEM 505, p. 3. Therefore, the Department will recalculate Claimant's unearned income (child support) and exclude the child support certified medical. See BEM 503, pp. 6-9 and BEM 505, p. 3.

It should be noted that the Department properly applied the \$151 standard deduction applicable to Claimant's group size of two. RFT 255 (December 2013), p. 1. The Department also indicated Claimant's monthly housing expense is \$667, which she did not dispute. See Exhibit 1. Finally, the Department gives a flat utility standard to all clients responsible for utility bills. BEM 554 (July 2013), pp. 14-15. The utility standard of \$553 (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 \$553 amount.

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 effective February 1, 2014, 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 February 1, 2014, ongoing, including Claimant's unearned income (child support) and in accordance with Department policy;
2. Issue supplements to Claimant for any FAP benefits she was eligible to receive but did not from February 1, 2014, ongoing; and
3. Notify Claimant in writing of its FAP decision in accordance with Department policy.



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

Date Signed: February 27, 2014

Date Mailed: February 27, 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:

2014-24145/EJF

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

EJF/tlf

cc:

