

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-24232
Issue No(s): 3008
Case No.: [REDACTED]
Hearing Date: February 24, 2014
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 February 24, 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], Family Independence Manager, and [REDACTED], Eligibility Specialist. Also, [REDACTED] was present at the hearing as Claimant's interpreter.

ISSUES

Did the Department properly calculate Claimant's Food Assistance Program (FAP) benefits for September and October 2013?

Did the Department properly close Claimant's 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 was an ongoing recipient of FAP benefits. See Exhibit 2.
2. On October 17, 2013, Claimant appeared at a previous administrative hearing (Registration #2013-68947), in which he disputed his FAP benefits closing effective September 1, 2013, ongoing, due to excess income. See Exhibit 1.

3. On October 24, 2013, the Administrative Law Judge (ALJ) sent a Decision and Order (D&O) in which he ordered the Department to reinstate Claimant's FAP case as of September 1, 2013, ongoing; recalculate the FAP budget and include \$4,522.83 as Claimant's self-employment income; issue supplements to the Claimant if eligible; and notify him in writing of the decision (Registration #2013-68947). See Exhibit 1.
4. On November 15, 2013, the Department certified the implementation of the D&O. See Exhibit 1.
5. On November 15, 2013, the Department sent Claimant a Notice of Case Action notifying him that his FAP benefits decreased to \$30 for September 2013 and also decreased to \$32 for October 2013. See Exhibit 2.
6. Effective November 1, 2013, Claimant's FAP benefits closed due to excess income. See Exhibit 1 and 2.
7. On January 21, 2014, Claimant filed a hearing request, protesting the FAP benefits. 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.

FAP benefits for September and October 2013

In this case, Claimant was an ongoing recipient of FAP benefits. See Exhibit 2. On October 17, 2013, Claimant appeared at a previous administrative hearing (Registration #2013-68947), in which he disputed his FAP benefits closing effective September 1, 2013, ongoing, due to excess income. See Exhibit 1. On October 24, 2013, the ALJ sent a D&O in which he ordered the Department to reinstate Claimant's FAP case as of September 1, 2013, ongoing; recalculate the FAP budget and include \$4,522.83 as Claimant's self-employment income; issue supplements to the Claimant if eligible; and notify him in writing of the decision (Registration #2013-68947). See Exhibit 1. On November 15, 2013, the Department certified the implementation of the D&O. See Exhibit 1. On November 15, 2013, the Department sent Claimant a Notice of Case Action notifying him that his FAP benefits decreased to \$30 for September 2013 and

also decreased to \$32 for October 2013. See Exhibit 2. Claimant testified that he was disputing his FAP allotment for September and October 2013.

It was not disputed that the certified group size is seven and there are no Senior/Disabled/Veteran (SDV) members. At the hearing, the Department presented the September and October 2013 FAP budgets. Each of the budgets were similar as to the self-employment income. The Department testified that based on the prior administrative D&O, it applied a self-employment income amount of \$4,522. See Exhibits 1 and 2. Claimant disagreed with the calculation of his self-employment amount. Claimant testified that he has additional deductions, such as fuel/maintenance expenses and other business expenses. Claimant inferred that the \$4,522 should be a lower amount due to additional deductions and testified that he could provide such proof.

Based on the foregoing information and evidence, this hearing will not address the calculation of the \$4,522 self-employment income. A previous administrative hearing was already held and determined that the appropriate self-employment income was \$4,522. See Exhibit 1. The Department was ordered to apply this amount to Claimant's FAP budget (self-employment income) effective September 1, 2013, ongoing. See Exhibit 1. It is found that the Department followed the proper implementation of the D&O. See BAM 600 (July 2013), pp. 39-40. Claimant's opportunity to dispute the ALJ's order of applying the \$4,522 self-employment income would have occurred after receiving the D&O on October 24, 2013. See Exhibit 1.

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. See BAM 600, pp. 36 and 42.

Claimant testified that he did not appeal the previous administrative order. Claimant failed to take the proper procedures to appeal the calculation of the \$4,522 self-employment income in accordance with Department policy. See BAM 600, pp. 36-42. Thus, the Department properly calculated Claimant's self-employment income in the amount of \$4,522 effective September 1, 2013, ongoing.

Additionally, Claimant testified that he was only disputing the calculation of the self-employment income. Thus, the additional FAP calculations appear fair and accurate.

First, for September 2013, Claimant's total income is \$4,522. See Exhibit 2. Then, this income is eligible for the 20% earned income deduction, which results in a post earned income deduction amount of \$3,617. See BEM 550 (July 2013), p. 1 and See Exhibit 2. The Department also applied the correct \$213 standard deduction applicable to Claimant's group size of seven. RFT 255 (October 2012), p. 1. This resulted in an adjusted gross income amount of \$3,404. See Exhibit 2.

Also, 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 (July 2013), 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. See Exhibit 2. The Department gives a flat utility standard to all clients responsible for utility bills. BEM 554, pp. 14-15. 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.

Furthermore, the total shelter obligation is calculated by adding Claimant's housing expenses to the utility credit; this amount is found to be \$1,375. See Exhibit 2. Then, the Department subtracts the total shelter amount from fifty percent of the \$3,404 adjusted gross income. Fifty percent of the adjusted gross income is \$1,702. When the Department subtracts the total shelter amount from fifty percent of the gross income, this results in no excess shelter deduction amount because half of the Claimant's adjusted gross income is greater than the total shelter amount. See Exhibit 2.

Finally, the Department then subtracts the \$3,404 adjusted gross income from the \$0 excess shelter deduction, which results in a net income of \$3,404. See Exhibit 2. A chart listed in RFT 260 is used to determine the proper FAP benefit issuance. Based on Claimant's group size and net income, the Department properly determined that Claimant's FAP benefit issuance is found to be \$30 for September 2013. RFT 260 (December 2012), p. 30.

Second, for October 2013, Claimant's total income is \$4,522. See Exhibit 2. Then, this income is eligible for the 20% earned income deduction, which results in a post earned income deduction amount of \$3,617. See BEM 550, p. 1 and See Exhibit 2. The Department also applied the correct \$218 standard deduction applicable to Claimant's group size of seven. RFT 255 (October 2013), p. 1. This resulted in an adjusted gross income amount of \$3,399. See Exhibit 2.

Also, 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 \$478. RFT 255, p. 1.

The Department indicated that Claimant's monthly housing expense is \$800. See Exhibit 2. The Department gives a flat utility standard to all clients responsible for utility bills. BEM 554, 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.

Furthermore, the total shelter obligation is calculated by adding Claimant's housing expenses to the utility credit; this amount is found to be \$1,353. See Exhibit 2. Then,

the Department subtracts the total shelter amount from fifty percent of the \$3,399 adjusted gross income. Fifty percent of the adjusted gross income is \$1,699. When the Department subtracts the total shelter amount from fifty percent of the gross income, this results in no excess shelter deduction amount because half of the Claimant's adjusted gross income is greater than the total shelter amount. See Exhibit 2.

Finally, the Department then subtracts the \$3,399 adjusted gross income from the \$0 excess shelter deduction, which results in a net income of \$3,399. See Exhibit 2. A chart listed in RFT 260 is used to determine the proper FAP benefit issuance. Based on Claimant's group size and net income, the Department properly determined that Claimant's FAP benefit issuance is found to be \$32 for October 2013. RFT 260 (October 2013), p. 30.

FAP benefits for November 2013, ongoing

The Department also determined that Claimant's FAP benefits closed effective November 1, 2013, ongoing, due to excess income. See Exhibit 2. The Department provided a November 2013 budget indicating that his income exceeded the limits. See Exhibit 2.

As stated above, the Department implemented the D&O and recalculated his November 2013 budget. However, on November 15, 2013, the Department found that his income still exceeded the limits and he was not eligible for benefits. A review of the Notice of Case Action dated November 15, 2013, determined that the Department did not notify the Claimant that his FAP benefits closed effective November 1, 2013, ongoing, due to excess income. See Exhibit 2. The Department testified that the most probable explanation was that the Claimant had already received such a notification beforehand. On August 9, 2013, the Department sent Claimant a Notice of Case Action notifying him that his FAP benefits closed effective September 1, 2013, ongoing, due to his gross income exceeding the limits. See Exhibit 2. The Department inferred that once it recalculated his November 2013 benefits, it still determined that his FAP exceeded the income limits and another closure notice was not sent.

A positive action is a DHS action to approve an application or increase a benefit. BAM 220 (July 2013), p. 1. A negative action is a DHS action to deny an application or to reduce, suspend or terminate a benefit. BAM 220, p. 1.

Upon certification of eligibility results, the Department automatically notifies the client in writing of positive and negative actions by generating the appropriate notice of case action. BAM 220, p. 1. There are two types of written notice: adequate and timely. BAM 220, p. 2.

An adequate notice is a written notice sent to the client at the same time an action takes effect (not pending). BAM 220, p. 2. Adequate notice for all programs includes an approval/denial of an application or increase in benefits. See BAM 220, p. 2.

Timely notice is given for a negative action unless policy specifies adequate notice or no notice. BAM 220, p. 4. A timely notice is mailed at least 11 days before the intended negative action takes effect. BAM 220, p. 4. The action is pended to provide the client a chance to react to the proposed action. BAM 220, p. 4. Actions not required notice for FAP only is located in BAM 220. See BAM 220, pp. 4-5.

Based on the foregoing information and evidence, the Department improperly closed Claimant's FAP benefits effective November 1, 2013, ongoing, when it failed to notify him of his case closure in accordance with Department policy. The Department properly notified Claimant of his September and October 2013 benefit allotments. See Exhibit 2. However, the Department failed to notify Claimant that his FAP benefits closed effective November 2013 in accordance with Department policy. See BAM 220, p. 1-5. Thus, the Department will reinstate Claimant's FAP benefits as of November 1, 2013. The Department will also apply the same calculations previously ordered in the administrative hearing held on October 17, 2013 (Registration #2013-68947). For example, the Department will apply \$4,522.83 as Claimant's self-employment income for the November 2013 budget. See Exhibits 1 and 2. Additionally, if Claimant is not eligible for FAP benefits due to excess income for subsequent benefit months, the Department must send Claimant notice of such closure in accordance with Department policy. See BAM 220, p. 1-5.

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 (i) acted in accordance with Department policy when it properly calculated Claimant's FAP benefits for September and October 2013; and (ii) improperly closed Claimant's FAP benefits effective November 1, 2013, ongoing, when it failed to notify him of his case closure in accordance with Department policy.

Accordingly, the Department's FAP decision is AFFIRMED IN PART with respect to the September and October 2013 FAP benefits and REVERSED IN PART with respect to the November 2013 FAP benefits.

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 Reinstatement Claimant's FAP case as of November 1, 2013;
- 2 Begin recalculating the FAP budget as of November 1, 2013, subject to applying the same calculations previously ordered in the administrative hearing held on October 17, 2013 (Registration #2013-68947);

- 3 Issue supplements to Claimant for any FAP benefits he was eligible to receive but did not from November 1, 2013; and
- 4 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: March 3, 2014

Date Mailed: March 3, 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

2014-24232/EJF

EJF/tlf

cc:

