

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 2014-25610  
Issue No.: 3001  
Case No.: [REDACTED]  
Hearing Date: March 5, 2014  
County: Macomb(36)

**ADMINISTRATIVE LAW JUDGE:** Carmen G. Fahie

**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, telephone hearing was held on Wednesday, March 5, 2014, from Lansing, Michigan. Participants on behalf of Claimant included the Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED], HF and [REDACTED], ES.

**ISSUE**

Due to excess income, did the Department properly  reduce Claimant's benefits for:

- |  |   |
|--|---|
| <input type="checkbox"/> Family Independence Program (FIP)?        | <input type="checkbox"/> Adult Medical Assistance (AMP)?    |
| <input checked="" type="checkbox"/> Food Assistance Program (FAP)? | <input type="checkbox"/> State Disability Assistance (SDA)? |
| <input type="checkbox"/> Medical Assistance (MA)?                  | <input type="checkbox"/> 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  received:  FAP benefits.
2. On January 14, 2014, the Department  reduced Claimant's benefits due to excess income.
3. On January 14, 2014, the Department sent Claimant its decision.
4. On January 30, 2014, Claimant 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 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.

Additionally, the Claimant was a recipient of FAP benefits. The Claimant was due for a redetermination to determine continued eligibility for FAP benefits. The Department Caseworker felt that the Claimant was not [REDACTED] because the Claimant worked for one employer, did not set his own hours, and the Claimants paid the Employer not the Claimant per BEM 502. In addition, the Department Caseworker stated that [REDACTED] must be supported by [REDACTED] not a [REDACTED] document. Department Exhibit's 4.1-4.2. As a result, the Claimant had a decrease in FAP from \$ [REDACTED] to \$ [REDACTED] for a family of 6. Department Exhibit's 5.1, 5.4, and 5.5. On January 14, 2014, the Department Caseworker sent the Claimant a notice that effect January 1, 2014 that the FAP benefits would decrease to \$ [REDACTED] due to excess income. Department Exhibit 3.16-3.17. BEM 501, 502, and 554. BAM 105.

During the hearing, the Claimant stated that they own their [REDACTED] called [REDACTED]. In addition, they provide their own tools and equipment for the job. They do have [REDACTED], but the previous Department Caseworker preferred the spreadsheet so that is what they provided. During some months, the Claimant is not called for a job and the family has no income.

BEM 502, INCOME FROM SELF-EMPLOYMENT, page 1

SELF-EMPLOYMENT, page 1

All TOA

Individuals who run their own businesses are self-employed. This includes but is not limited to selling goods, farming, providing direct services, and operating a facility that provides services such as adult foster care home or room and board.

EMPLOYMENT OR SELF-EMPLOYMENT INCOME?, page 1

It is sometimes difficult to determine if an individual's income should be entered in the earned income or self-employment LUW. Make a determination based on available information and document your rationale. Use the following guidelines to help make that determination; consider the following to be indicators of self-employment:

BRIDGES ELIGIBILITY MANUAL STATE OF MICHIGAN DEPARTMENT OF HUMAN SERVICES

The individual sets own work hours.

The individual provides own tools used on the job.

The individual is responsible for the service being provided and for the methods used to provide the service.

The individual collects payment for the services provided from the individual paying for them.

A Claimant need not meet all of the above to be considered self-employed.

Do not consider the following in making the determination of whether a Claimant's income is considered self-employment or employment:

Withholding of income tax from payment made to individual.

Whether or not the individual files income tax.

Whether or not individual receives a federal Form 1099. (page 2)

Example 1: Joe has a contract with the local hospital to provide snow removal services. He drives his own snow removal vehicle and pays for his own gas. The hospital pays him directly based on the number of times his services are used. Joe is self-employed.

Example 4: Mary Jo is a massage therapist at a local chiropractor's office. She uses a room in the office and uses its table. She provides her own oils and linens used for the massages and set her own hours. She collects payment directly from the Claimants and pays the chiropractor's office \$10 for each massage provided. Mary Jo is self-employed. (Page 2)

Example 4: Mary Jo is a massage therapist at a local chiropractor's office. She uses a room in the office and uses its table. She provides her own oils and linens used for the massages and set her own hours. She collects payment directly from the Claimants and pays the chiropractor's office \$10 for each massage provided. Mary Jo is self-employed.  
BEM 502 3 of 8 INCOME FROM SELF-EMPLOYMENT BPB 2014-002 1-1-2014  
BRIDGES ELIGIBILITY MANUAL STATE OF MICHIGAN DEPARTMENT OF HUMAN SERVICES

COUNTABLE SELF-EMPLOYMENT INCOME, page 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. If allowable expenses exceed the total proceeds, the amount of the loss cannot offset any other income except for farm loss amounts. See Farming Expenses below.

Example: An individual operates a retail store. Total proceeds for the month are \$3,200. Allowable expenses total \$3,800. The \$600 deficit cannot be used to offset any other income.

Allowable expenses are the higher of 25 percent of the total proceeds, or actual expenses if the Claimant chooses to claim and verify the expenses.

### SELF-EMPLOYMENT EXPENSES, page 3

Allowed

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.

### VERIFICATION SOURCES, page 7

All TOA

Self-Employment Income

Primary source - Income tax return provided:

The Claimant hasn't started or ended self-employment, or received an increase/decrease in income, etc.

The tax return is still representative of future income.

The Claimant filed a tax return.

Secondary source - DHS-431, Self-Employment Statement, with all income receipts to support claimed income.

Third source - DHS-431, Self-Employment Statement, without receipts. When this verification source is used, a Front End Eligibility (FEE) referral is required. Do not open the case until the FEE investigation is completed.

Exception: Expedited FAP cases must be opened within the expedited standard of promptness regardless if the FEE investigation is complete.

Self-Employment Expenses

DHS-431, Self-Employment Statement, with receipts.

This Administrative Law Judge finds that the Department has not met its burden that the Claimant is not [REDACTED] resulting in a decrease in FAP benefits. Since the Claimant provided verifications that were not sufficient for this Department Caseworker, but had been used in the pass by a previous Department Caseworker, this Department Caseworker should have sent out a Verification Checklist for the Claimant to provide additional verification to assist the Department to prove that the Claimant is [REDACTED].

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  did not act in accordance with Department policy when it failed to allow the Claimant to submit additional verification to prove [REDACTED].

**DECISION AND ORDER**

Accordingly, the Department's 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. Initiate a redetermination of the Claimant's eligibility for FAP by sending a Verification Checklist, DHS 3503 for the Claimant to provide additional verification based in policy in determining self-employment and itemized receipts for expense deduction.
2. Provide the Claimant with written notification of the Department's revised eligibility determination.
3. Issue the Claimant any retroactive benefits she/he may be eligible to receive, if any.

*Carmen G. Fahie*

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Carmen G. Fahie  
Administrative Law Judge  
for Maura Corrigan, Director  
Department of Human Services

Date Signed: 3/14/14

Date Mailed: 3/14/14

**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 Claimant;
- 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

CGF/tb

cc:

