

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

IN THE MATTER OF:

██████████
██████████████████
████████████████████

Reg. No.: 2014-28093
Issue No.: 3008
Case No.: ██████████
Hearing Date: March 17, 2014
County: Wayne (19)

ADMINISTRATIVE LAW JUDGE: Zainab Baydoun

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 March 17, 2014, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included █████ █████, Family Independence Manager and ██████████, Family Independence Specialist.

ISSUE

Did the Department properly calculate the amount of Claimant's Food Assistance Program (FAP) benefits?

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.
2. In connection with a redetermination, Claimant's eligibility to receive FAP benefits was reviewed.
3. Claimant was approved for FAP benefits in the amount of \$ █████ effective March 1, 2014.
4. On February 20, 2014, Claimant submitted a hearing request disputing the amount of her FAP benefits.

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.

Additionally, the gross amount of money earned from Supplemental Security Income (SSI) is included in the calculation of unearned income for purposes of FAP budgeting. BEM 503 (January 2014), pp. 31-32. State SSI Payments (SSP) are issued quarterly and the monthly SSP benefit amount is counted as unearned income. BEM 503, p.33. Family Independence Program (FIP) benefits are considered unearned income of the head of household. BEM 503, p. 14.

At the hearing, the FAP EDG Net Income Results Budget for March 1, 2014 was reviewed. (Exhibit 1). The Department concluded that Claimant had unearned income of ██████, which it testified came from ██████ in ██████ benefits for Claimant; ██████ benefits for Claimant's boyfriend/father of her child; ██████ SSP benefits for both Claimant and her boyfriend; and ██████ in FIP benefits. Although Claimant confirmed that the amounts relied on by the Department were correct, Claimant stated that her boyfriend does not live with her. Claimant testified that he spends most of his time in California and is only in Michigan three to four months out of the year. Claimant further testified that although he does receive mail at her home address, he is not often at her home for more than 30 days at a time and only travels to Michigan to visit his children.

While policy provides that parents and their children under 22 years of age who *live* together must be in the same group regardless of whether the children have their own spouse or child who live with the group, in this case, applying the policy found in BEM 212, Claimant and her boyfriend do not live together, as his absence is not to be considered temporary. BEM 212 (February 2014), pp.1-3. Additionally, to be eligible for FAP benefits issued by the Department, an individual must be a Michigan resident. BEM 220 (February 2014), p. 1. For FAP purposes, a person is considered a resident while living in Michigan for any purpose other than a vacation, even if he has no intent to remain in the State permanently or indefinitely. BEM 220, p. 1. A client who resides outside the State of Michigan for more than thirty days is not eligible for FAP benefits issued by the State of Michigan. BEM 212, pp. 2-3.

Because the income of a non-group member is to be excluded, the Department did not act in accordance with Department policy when it included the father of Claimant's child as a group member and applied his unearned income to Claimant's FAP budget. See BEM 212. BEM 550 (February 2014), p.2.

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 after further review of the evidence presented, because of the errors in the calculation of Claimant's unearned income and the inclusion of the father of Claimant's child as a mandatory group member, the Department did not act in accordance with Department policy when it calculated Claimant's FAP benefits.

DECISION AND ORDER

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. Recalculate Claimant's FAP budget for March 1, 2014, ongoing; and
2. Issue supplements to Claimant for any FAP benefits that she was entitled to receive but did not from March 1, 2014, ongoing.



Zainab Baydoun
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: March 18, 2014

Date Mailed: March 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.

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

ZB/tm

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]