

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

IN THE MATTER OF:

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Reg. No.: 2014-32666
Issue No(s): 3008
Case No.: ██████████
Hearing Date: April 16, 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 April 16, 2014, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department or DHS) included ██████████, Assistant Payment Worker; and ██████████, Family Independence Manager.

ISSUES

Did the Department properly calculate Claimant's Food Assistance Program (FAP) allotment effective November 1, 2013, ongoing?

Did the Department properly process Claimant's change report (employment ending)?

Did the Department properly implement and certify a previous Decision and Order (D&O) regarding an administrative hearing held on January 6, 2014?

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. See Exhibit 1.
2. On November 21, 2013, Claimant previously requested a hearing in which she disputed her FAP allotment for November 1, 2013, ongoing (See Reg #2014-15339). See Exhibit 1.

3. A previous hearing was held in which the Administrative Law Judge (ALJ) issued a D&O that ordered the Department to recalculate Claimant's FAP budget for November 1, 2013, ongoing; issue supplements to Claimant for any FAP benefits she was eligible to receive but did not from November 1, 2013, ongoing; and notify Claimant in writing (Reg #2014-15339). See Exhibit 1.
4. On November 21, 2013, the Department indicated that it first became aware that Claimant was no longer employed when she requested a previous hearing.
5. On December 3, 2013, the Department sent Claimant a Verification Checklist (VCL) and a Verification of Employment, which requested the verification of loss of employment. See Exhibit 1. The verification was due back by December 13, 2013. See Exhibit 1.
6. The Department never received the verification of loss of employment by the due date.
7. Because the Department never received the verification, on February 3, 2014, the Department completed an other income-search and found that Claimant did not have any reported earnings regarding her employment for fourth quarter 2013. See Exhibit 1.
8. The Department used the verification receipt date of February 3, 2014 and thus, did not issue supplemental payments from November 2013, ongoing.
9. On February 10, 2014, the Department sent an Administrative Hearing Order Certification (DHS-1843), which stated that Claimant's benefits were pending verification of loss of employment and since it was not received until February 3, 2014, she was not provided any supplement payments. See Exhibit 1.
10. On March 17, 2014, Claimant filed a hearing request, protesting the Department's action. 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.

All hearing decisions must be recorded in the system, on the Hearing Restore Benefits screen. BAM 600 (July 2013), p. 38. Some hearing decisions require implementation by the local office. BAM 600, p. 38. The Department implements a decision and order within 10 calendar days of the mailing date on the hearing decision. BAM 600, p. 38. The Department completes the necessary case actions within 10 calendar days of the mailing date noted on the hearing decision. BAM 600, p. 39. Complete and send the DHS-1843, Administrative Hearing Order Certification, to the Michigan Administrative Hearing System (MAHS) to certify implementation and place a copy of the form in the case file. BAM 600, p. 39.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (January 2014), p. 9. Changes must be reported within 10 days of receiving the first payment reflecting the change, which includes the stopping of employment (earned income). BAM 105, p. 9. The Department acts on a change reported by means other than a tape match within 10 days of becoming aware of the change. BAM 220 (January 2014), p. 7. Changes which result in an increase in the household's benefits must be effective no later than the first allotment issued 10 days after the date the change was reported, provided any necessary verification was returned by the due date. BAM 220, pp. 6-7.

In this case, Claimant is an ongoing recipient of FAP benefits. See Exhibit 1. On November 21, 2013, Claimant previously requested a hearing in which she disputed her FAP allotment for November 1, 2013, ongoing (See Reg #2014-15339). See Exhibit 1. A previous hearing was held in which the ALJ issued a D&O that ordered the Department to recalculate Claimant's FAP budget for November 1, 2013, ongoing; issue supplements to Claimant for any FAP benefits she was eligible to receive but did not from November 1, 2013, ongoing; and notify Claimant in writing (Reg #2014-15339). See Exhibit 1.

On November 21, 2013, the Department testified that it first became aware that Claimant was no longer employed when she requested her previous hearing. On December 3, 2013, the Department sent Claimant a VCL and a Verification of Employment, which requested the verification of loss of employment. See Exhibit 1. The verification was due back by December 13, 2013. See Exhibit 1. On December 6, 2013, the Department testified that Claimant left a voicemail indicating she needed a verification of employment form mailed to her. The Department testified that it never received the verification of loss of employment by the due date. Because the Department never received the verification, on February 3, 2014, the Department testified that it completed an other income-search and found that Claimant did not have any reported earnings regarding her employment for the fourth quarter 2013. See Exhibit 1. Thus, the Department used the verification receipt date of February 3, 2014 and did not issue supplemental payments from November 2013, ongoing. On February 10, 2014, the Department sent an Administrative Hearing Order Certification (DHS-1843), which stated that Claimant's benefits were pending verification of loss of employment and since it was not received until February 3, 2014, she was not provided any supplemental payments. See Exhibit 1.

At the hearing, Claimant testified that she submitted verification of her employment ending on multiple occasions. Claimant testified that her employment ended in July 2013 and that her FAP benefits should have been increased in November 2013. During the hearing, Claimant read prior hearing summaries that she had regarding previous hearing requests she submitted. Moreover, Claimant testified that she submitted verification of her employment ending on three different occasions. Claimant testified that she submitted verification in July and/or August 2013; November 2013; and March 2014. Specifically, Claimant testified that she submitted verification on November 5, 2013. During the hearing, both parties reviewed the log book and discovered a submission of documents on November 7, 2013. However, no verification of employment ending was submitted on that date. Nonetheless, Claimant testified that she spoke to the Department multiple times regarding her loss of employment as well. Ultimately, Claimant inferred that the Department was aware that she reported her loss of employment before November 2013 and provided such necessary verifications.

For stopping income, the Department budgets the final income expected to be received in the benefit month. BEM 505 (July 2013), p. 7. The Department uses the best available information to determine the amount of the last check expected. BEM 505, p. 7. The Department uses information from the source and from the client. BEM 505, p. 7. Remove stopped income from the budget for future months. BEM 505, p. 7.

Under verification requirements, the Department uses available electronic methods (for example consolidated inquiry or SOLQ) to verify income. BEM 500 (January 2014), p. 12. When electronic verification is not available or inconsistent with client statement, the client has primary responsibility for obtaining verification. BEM 500, p. 12. Acceptable verification sources include documents (pay stubs) or consolidated inquiry or other sources listed in BEM 500. See BEM 500, p. 13 and also BEM 501 (January 2014), p. 11.

The Department tells the client what verification is required, how to obtain it, and the due date. BAM 130 (January 2014), p. 3. The Department uses the DHS-3503, Verification Checklist (VCL), to request verification. BAM 130, p. 3. The client must obtain required verification, but the Department must assist if they need and request help. BAM 130, p. 3. If neither the client nor the Department can obtain verification despite a reasonable effort, the Department uses the best available information. BAM 130, p. 3. If no evidence is available, the Department uses its best judgment. BAM 130, p. 3.

Based on the foregoing information and evidence, the Department improperly calculated Claimant's FAP benefits effective November 1, 2013, ongoing.

First, the Department testified that it first learned of Claimant's loss of employment on November 21, 2013 (hearing request). However, Claimant credibly testified that she notified the caseworker and/or supervisor on multiple occasions before November 2013 that her employment ended. As such, the evidence presented that Claimant notified her change report (employment ending) before November 2013.

Second, the Department could have used the best available information to determine that Claimant's income had stopped. See BAM 130, p. 3. The best available information includes using other available electronic methods to determine that her income had stopped or even collateral contact. See BEM 500, pp. 12-13 and BAM 130, p. 1. Even though the Department alleges it did not receive the requested documentation before the due date, it could have used other acceptable verification sources to verify the income had stopped. See BEM 500, pp. 12-13. In fact, on February 3, 2014, the Department verified via the consolidated inquiries that Claimant's income had ended in the fourth quarter of 2013. See Exhibit 1. Based on this information, at the time the Department became aware of Claimant's employment had ended, it could have used other available electronic methods to determine that her income had stopped or even collateral contact. See BEM 500, pp. 12-13 and BAM 130, p. 1. Because the Department failed to use the best available information to determine that Claimant's income had stopped, it improperly calculated Claimant's FAP benefits effective November 1, 2013, ongoing. See BEM 500, pp. 12-13 and BAM 130, pp. 1-3.

In summary, the evidence presented that the Department was aware of Claimant's change report (income ending) before November 2013 and it could have used other available information (i.e., consolidated inquiries) before November 2013 to verify that her income had stopped. Therefore, the Department improperly budgeted her earned income/calculated her FAP benefits effective November 1, 2013, ongoing. Because the Department improperly calculated the FAP budget, it also failed to properly implement and certify the D&O sent on January 10, 2014 from the previous administrative hearing (Reg. #2014-15339). BAM 600, pp. 38-39.

It should be noted that Claimant also testified that she was disputing her current FAP allotment. However, based on the above information, the Department will already recalculate her FAP benefits effective November 1, 2013, ongoing.

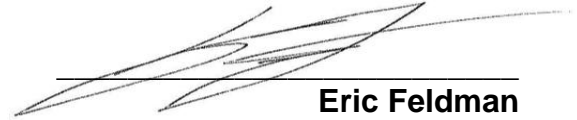
DECISION AND ORDER

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 (i) improperly calculated Claimant's FAP benefits effective November 1, 2013, ongoing; and (ii) failed to satisfy its burden of showing that it acted in accordance with Department policy when it failed to properly implement and certify the D&O sent on January 10, 2014 from the previous administrative hearing (Reg. #2014-15339).

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 removal of Claimant's earned income (employment that had ended) from the budget and in accordance with Department policy;
2. Issue supplements to Claimant for any FAP benefits she 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.



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

Date Signed: April 23, 2014

Date Mailed: April 23, 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:

2014-32666/EJF

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

EJF/cl

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