

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

IN THE MATTER OF:

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

Reg. No.: 2014 33400
Issue No(s): 2001
Case No.: ██████████
Hearing Date: April 21, 2014
County: Genesee County 06

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 April 21, 2014, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. Participants on behalf of the Department of Human Services (Department) included ██████████ Hearing Facilitator.

ISSUE

Did the Department properly calculate the Claimant's business expenses from self-employment when calculating The Claimant's Food Assistance eligibility?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On March 7, 2014 the Department issued a Notice of Case Action advising the Claimant that a few business expenses associated with the verifications provided were not allowed. The Department recalculated the Claimant's FAP benefits and decreased the benefits to ██████████ effective March 1, 2014.
2. The Claimant owns and operates an insurance agency selling insurance.
3. The Department did not allow the Claimant's mileage expense for use of his automobile for business purposes and also denied as a monthly expense the painting of the office building where the business is located and a roof repair expense to the same building. The Department allowed those expenses for only the month they were incurred.

4. The Claimant requested a hearing on March 18, 2014 protesting the Department determination of the Food Assistance allotment and calculation of self-employment income.

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 issue in this case involves whether the Department properly disallowed three business expenses which the Claimant claims are legitimate business expenses which should be included and deducted from the countable income. This decision will not determine the correct FAP benefit amount, it will only address whether the Department properly disallowed business expenses when calculating the countable income From Self-Employment.

Countable income from self-employment equals the total proceeds **minus** allowable expenses of producing the income. BEM 502, pp. 3 (4/1/14). Policy further defines allowable expenses:

BEM 502, pp. 3 (4/1/14)

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.
- A net loss from a previous period.
- Federal, state and local income taxes.
- Personal entertainment or other individual business expenses.
- Money set aside for retirement.
- Depreciation on equipment, real estate or other capital investments.
- Farming

The parties agreed that the beginning gross income based on the 2013 federal income tax return was [REDACTED]

At the Hearing, the Department conceded that it would have included the Snow Removal Expenses incurred throughout the winter by the business for snow clearing of its parking lot. At the time the expenses were not included because the Department was not sure what the expenses were for. The total expense presented by the receipt was [REDACTED]

The Department also disallowed two building maintenance expenses incurred by the Claimant; one in June 2012 for painting and one in April 2012 for a roof repair. The repairs were shown on the Federal income tax return in the amounts of [REDACTED] and [REDACTED] respectively, for a total of \$[REDACTED]. Exhibit 1, pp. 19, 20, 21 and 81. None of these expenses were included because they were deemed expenses incurred in that one month and were not spread over a 12 month period. Nothing could be found in policy that would allow this interpretation. After reviewing policy, it cannot be determined why these expenses were not included as business expenses for purposes of determining self-employment income. Repair and maintenance of the building where the business is conducted is a legitimate business expense and is similar to snow removal costs. The fact that the expense is incurred in one month and is not an ongoing expense is no reason to disallow the expense that is known and verified by receipts. The total cost of these repairs and maintenance was reported as an annual expense on the federal tax return and a monthly amount associated with these expenses should have been included in the business allowable expense calculation. As these expenses are not

excluded expenses as defined by BEM 502 and are identifiable costs of producing self-employment income, they should have been included and a monthly cost determined.

The Department also did not include the Claimant's cost for mileage associated with the use of the business automobile for business purposes. The Claimant's 2012 Federal Income Tax Return, Schedule C, included [REDACTED] as the annual cost associated with car expenses. The Department sought receipts for gas which were not provided by the Claimant. The Claimant at the hearing testified that he does keep a detailed calendar of all business use of the business automobile and tracks starting and finishing mileage associated with each business trip. The total annual mileage is multiplied by the \$.55 per mile federal allowable cost which covers maintenance repair and gas, and insurance and other items associated with the use of the automobile.

The Department testified that the only transportation costs which it could use would be fuel costs based on its interpretation policy found BEM 502. That policy indicates that fuel is an example of transportation costs, not the only cost associated with transportation. To the extent that the federal government allows a mileage allowance as a means of calculating the costs associated for use of an automobile for business it should be accepted by the Department. This is particularly true as the miles associated with the use can be verified in detail by the Claimant by review of his calendar and tracking of the mileage. Thus it is determined that gas receipts alone would not have sufficiently accounted for the costs associated with the use of the automobile for business purposes. The federal allowance includes additional items such as repairs, oil, new tires and general wear and tear. In addition, the \$.55 per mile is based upon an annual study conducted by the IRS including all the fixed and variable cost of operating a vehicle.

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 disallowed the cost of snow removal, roof repair and painting of the building where the business is located and denied car expenses in the amount \$6703 annually.

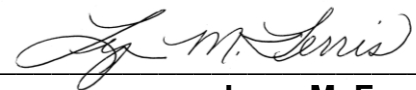
DECISION AND ORDER

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. The Department shall recalculate the business expenses and include the monthly cost of car expense, painting and roof repair and snow removal. The Department may seek verification of the car expense based upon the calendar kept by the Claimant if it deems necessary.
2. The Department shall recalculate the Claimant's countable income associated with self-employment and shall recalculate the Claimant's FAP benefits and issue a FAP supplement if appropriate to the Claimant for FAP benefits the Claimant was otherwise entitled to receive in accordance with Department policy
3. The Department shall notify the Claimant in writing of its determination.



Lynn M. Ferris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: April 25, 2014

Date Mailed: April 25, 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

2014-33400/LMF

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

LMF/tm

cc:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]