

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201430286
Issue No.: 2001, 3001
Case No.: [REDACTED]
Hearing Date: April 8, 2014
County: Washtenaw County DHS

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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 8, 2014, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED] [REDACTED] and [REDACTED].

ISSUE

Whether the Department of Human Services (Department) properly determined the Claimant's countable income?

FINDINGS OF FACT

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

1. The Claimant is an ongoing Medical Assistance (MA), Medicare Savings Plan, and Food Assistance Program (FAP) recipient.
2. On December 10, 2013, an agent of the Office of Inspector General completed a report concluding that the Claimant received in-home rental income that was not reported to the Department.
3. The Office of Inspector General initiated closure of the Claimant's Food Assistance Program (FAP) benefits
4. On February 14, 2014, the Department notified the Claimant that it would close her Medical Assistance (MA) and Medicare Savings Program benefits.
5. The Department received the Claimant's request for a hearing on February 27, 2014, protesting the Department's determination of her countable income.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

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.

Some types of rental/room and board income are counted as unearned income and some as earned income or self-employment. Rental income is money an individual (landlord) receives for allowing another individual (renter) to use the landlord's property. It includes income from a lease. In-home rental is when a landlord rents out part of his own dwelling to another individual. Department of Human Services Bridges Eligibility Manual (BEM) 504 (July 1, 2013), pp 1-6.

Bridges counts the gross rent payment minus expenses as earned income from self-employment. Bridges allows the higher of the following:

- 60% of the rental payment.
- Actual rental expenses if the landlord chooses to claim and verify the expenses. BEM 504.

Expenses must be both of the following:

- Clearly expenses of the rental unit (for example expenses the landlord would not have if not renting out part of his dwelling).
- Included in the list of allowable rental expenses. BEM 504.

Other rental income means any rental income that is not:

- Farm land rental.
- In-home rental.
- Room and board. BEM 504.

Example: Individual rents his non-homestead house to another individual. Bridges determines whether to treat the rent as earned or unearned income based on the time the landlord actively engages in managing the rental property:

- Under 20 hours per week- unearned income.
- 20 or more hours per week- earned income. BEM 504.

A donation to an individual by family or friends is the individual's unearned income. Department of Human Services Bridges Eligibility Manual (BEM) 503 (January 1, 2014), p 10.

Allow a shelter expense when the FAP group has a shelter expense or contributes to the shelter expense. Do not prorate the shelter expense even if the expense is shared. Shelter expenses are allowed when billed. The expenses do not have to be paid to be allowed. Housing expenses include rent, mortgage, a second mortgage, home equity loan, required condo or maintenance fees, lot rental or other payments including interest leading to ownership of the shelter occupied by the FAP group. Property taxes, state and local assessments and insurance on the structure are allowable expenses. Department of Human Services Bridges Eligibility Manual (BEM) 504 (May 1, 2014), pp 12-13.

In this case, the Claimant was an ongoing Medical Assistance (MA), Medicare Savings Program, and Food Assistance Program (FAP) recipient. On December 10, 2013, an agent of the Office of Inspector General completed a report concluding that the Claimant received in-home rental income that was not reported to the Department. The Office of Inspector General initiated closure of the Claimant's Food Assistance Program (FAP) benefits. On February 14, 2014, the Department notified the Claimant that it would close her Medical Assistance (MA) and Medicare Savings Program benefits due to excess income.

The Department's representative testified that the Claimant's circumstances concerning shelter were investigated by the Department due to concerns that her shelter expenses appeared to be unaffordable.

Based on the evidence and testimony available during the hearing, this Administrative Law Judge finds that the Department failed to establish that it was acting in accordance with policy when it determined the Claimant's countable income. The Department failed to explain how it determined that the Claimant receives rental income as opposed to a contribution towards shared expenses by a family member. The Department failed to explain how it determined the amount of rental income countable towards the Claimant's benefits. Assuming that the Claimant does receive countable rental income, whether earned, unearned, or self-employment, the Department failed to request that the Claimant provide verification of her countable expenses allowable by policy as deductions from that income.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined the Claimant's countable income.

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. Allow the Claimant a ten day period to provide verification material to clarify the nature of her shelter expenses and arrangements.
2. Initiate a determination of the Claimant's eligibility for Medical Assistance (MA), Medicare Savings Program, and Food Assistance Program (FAP) benefits as of March 1, 2014.
3. Provide the Claimant with a Notice of Case Action (DHS-1605) describing the Department's revised eligibility determination.
4. Issue the Claimant any retroactive benefits she may be eligible to receive, if any.



Kevin Scully
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: April 9, 2014

Date Mailed: April 9, 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;

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- 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

KS/hj

cc:

