

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-003102
Issue No.: 3008
Case No.: [REDACTED]
Hearing Date: JUNE 23, 2014
County: WAYNE-DISTRICT 35

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 June 23, 2014, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Hearing Facilitator.

ISSUE

Did the Department properly calculate Claimant's Food Assistance Program (FAP) benefits for June 1, 2013 ongoing?

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.
2. Claimant has two people in his FAP group.
3. Claimant is a senior/disabled/veteran (SDV) member of his FAP group.
4. Claimant receives monthly Retirement, Survivors and Disability Insurance (RSDI) income totaling \$882 and his son receives monthly RSDI income totaling \$225.
5. In connection with a FAP redetermination, the Department recalculated Claimant's FAP eligibility.

6. On May 14, 2014, the Department sent Claimant a Notice of Case Action notifying him that he was eligible for monthly FAP benefits of \$15 effective June 1, 2013 ongoing.
7. On May 21, 2014, Claimant filed a request for hearing disputing 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), 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 273. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001 to .3015.

Additionally, the Department initially determined that Claimant was eligible for monthly FAP benefits of \$15 effective June 1, 2014. Claimant requested a hearing, explaining that he did not understand why he was no longer eligible for the \$347 in monthly FAP benefits he had received prior to the redetermination. Before the hearing, the Department recalculated Claimant's FAP budget and sent him a May 19, 2014 Notice of Case Action notifying him that he was eligible in \$145 in monthly FAP benefits effective June 1, 2014. At the hearing, the Department testified that it had again recalculated Claimant's FAP budget on May 27, 2014 and found him eligible for monthly FAP benefits of \$347. However, there was no Notice of Case Action or other documentation to establish the \$347 FAP benefits, which is the maximum available for a FAP group with two members. RFT 260 (December 2013). Therefore, the FAP budget included in the hearing packet was reviewed at the hearing.

This budget presented into evidence showed that Claimant received \$30 less in monthly unearned income than shown in the May 19, 2014 Notice of Case Action and was eligible for \$154 in monthly FAP benefits, rather than the \$145 shown in the Notice. The information used in the budget presented by the Department was reviewed with Claimant at the hearing.

The FAP budget showed \$1270 in unearned income, which the Department testified was the sum of Claimant's gross monthly \$882 RSDI income, his son's gross monthly \$225 RSDI income, and his gross monthly child support of \$163.40. Claimant confirmed his and his son's RSDI income but was concerned about the calculation of his child support income.

In determining child support income, the Department must use the average of child support payments received in the past three calendar months, *unless changes are expected*. BEM 505 (July 2013), p. 3 (emphasis added). If there are known changes that will affect the amount of the payments for the future, the Department should **not** use the past three months to project. BEM 505, p. 4.

In calculating Claimant's gross monthly child support, the Department testified that it determined the average monthly child support income Claimant received for the three months preceding the redetermination and considered child support Claimant received in February 2014 (\$399.50), March 2014 (\$90.71) and April 2014 (\$0). Claimant credibly testified that he last received a full child support payment due to him from his child's mother for February 2014, which payment was garnished from her wages. He further testified that the child's mother quit her job in March 2014, he received a partial child support payment in March 2014 from the mother's last check from the employer, and he had not received any child support since then. Claimant credibly testified that he explained these circumstances to his worker at the time of the redetermination. The consolidated inquiry the Department relied on in calculating Claimant's child support income supports Claimant's testimony, showing that Claimant received only a partial child support payment at the beginning of March 2014 and no payment in April 2014 and May 2014. Because Claimant was not receiving child support on an ongoing basis and did not expect to receive any, the Department did not act in accordance with Department policy when it considered the three-month average in prospecting his ongoing child support income. Thus, the Department did not act in accordance with Department policy when it calculated Claimant's gross unearned income.

The deductions applied to Claimant's gross income in determining his net income were also reviewed at the hearing. In the calculation of a client's net income for FAP eligibility purposes, deductions are available from gross income for certain expenses. BEM 554 (May 2014), p. 1. At the hearing, Claimant testified that he had an ongoing legal obligation to pay \$447 monthly for a bankruptcy-related matter that significantly reduced his available income. However, a review of Department policy shows that there is no Department-policy basis for excluding this bankruptcy-related obligation from the calculation of Claimant's gross income. See BEM 500 (January 2014), pp. 4-5; BEM 554 (May 2014), p. 1; BEM 556 (July 2013), pp. 1-7).

Because Claimant did not have any earned income and he was a senior/disabled/veteran (SDV) member of his FAP group, he was eligible for the following deductions under Department policy:

- a standard deduction of \$151 based on his two-person group size (RFT 255 (December 2013), p. 1; BEM 556, p. 4);
- an excess shelter deduction, which takes into account monthly housing expenses and the \$553 heat and utility standard that continues to apply to Claimant's case (RFT 255, p. 1; BEM 554, pp. 1, 12-15); and

- expenses for child care, child support and medical expenses in excess of \$35 (BEM 554, p. 1).

The only issue presented with respect to the deductions available to Claimant was the calculation of his excess shelter deduction. Claimant did not dispute the Department's reliance on \$1043.84 as his monthly mortgage and homeowners' insurance premium. However, he credibly testified that he also had monthly property taxes that he had verified. Property taxes are allowable monthly housing expenses. BEM 554, p. 13. Therefore, the Department did not act in accordance with Department policy when it did not consider Claimant's property taxes in calculating his monthly housing costs.

Furthermore, the FAP budget shows that the Department applied the \$478 maximum excess shelter deduction to Claimant's case. RFT 255, p. 1. Because Claimant is an SDV member of his FAP group, his excess shelter deduction is not subject to the \$478 maximum excess shelter limit. Therefore, the Department did not act in accordance with Department policy when it applied this limit to Claimant's case.

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 calculated Claimant's monthly FAP benefits.

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. Recalculate Claimant's FAP budget for June 1, 2014 ongoing;
2. Issue supplements to Claimant for any FAP benefits he was eligible to receive but did not from January 1, 2014 ongoing; and
3. Notify Claimant in writing of its decision.



Alice C. Elkin
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **6/24/2014**

Date Mailed: **6/25/2014**

ACE / tlf

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration 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 party requesting a rehearing or reconsideration 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 this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, 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

cc:

