

**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.: 14-010082
Issue No.: 3001
Case No.: ██████████
Hearing Date: September 17, 2014
County: Macomb (12-Mt Clemens)

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 September 17, 2014, from Detroit, Michigan. Participants on behalf of Claimant included Claimant ██████████
██████ ██████████ ██████████ ██████████ ██████████ ██████████ Participants on behalf of the Department of Human Services (Department) included ██████████
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ISSUE

Did the Department properly calculate Claimant's child support income for purposes of calculating her monthly Food Assistance Program (FAP) benefits effective September 1, 2014, 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. In connection with a FAP redetermination, the Department recalculated Claimant's FAP eligibility.
3. On August 14, 2014, the Department sent Claimant a Notice of Case Action advising her that she was approved for monthly FAP benefits of \$106, reduced by a \$10 administrative recoupment, for September 1, 2014, ongoing.
4. On August 19, 2014, Claimant requested a hearing disputing the Department's calculation of her child support in determining her FAP eligibility.

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.

The sole issue in this case is the Department's calculation of Claimant's child support income in connection with her FAP benefit calculation.

In calculating Claimant's ongoing 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, specifically her child support income for May 2014 (\$1,734.15), June 2014 (\$499.40) and July 2014 (\$249.69). Based on the average of these payments, the Department concluded that Claimant's ongoing monthly child support income was \$827.75.

In prospecting future child support income, Department policy requires that, unless changes are expected, the Department use the average of child support payments received in the past three calendar months. BEM 505 (July 2014), p. 3. However, the Department does not include child support payments that are unusual and not expected to continue. BEM 505, p. 3.

Claimant disputed the Department's calculation, particularly its consideration of the child support payment made to her on May 9, 2014, in the amount of \$1,169. At the hearing, Claimant explained that she generally received one monthly child support payment, which included arrearages, between the 2nd and 8th of each month that was garnished from her son's father's wages. However, because the child's father was so behind in his payments, she often received a lump-sum payment annually from his tax refund. She explained that the May 9, 2014, payment of \$1,169 was a garnished tax refund.

A review of the Department's consolidated inquiry shows, consistent with Claimant's testimony, that a single child support payment was made to Claimant between the fourth and seventh for each month from May 2014 and July 2014 and then an additional May payment was made to Claimant on May 9, 2014, for \$1,169, an amount more than twice the payment she received on May 6, 2014. The timing of the May 9, 2014, payment is consistent with a tax refund. Because this payment was an unusual payment and not expected to recur, it should have not been considered in prospecting

Claimant's child support income. The Department would have been aware of the nature of the May 9, 2014, child support payment received by Claimant if it had discussed the matter with Claimant at the time of her determination as required by policy. BEM 505, p. 4. Under the evidence presented, the Department did not act in accordance with Department policy when it considered the \$1,169 payment in calculating Claimant's monthly child support income.

During the course of the hearing, Claimant testified that her son's father was no longer working in [REDACTED] for the military, that she has not received any child support from her son's father since the July 2014 payment, that the [REDACTED] garnishment order was no longer active, and that she did not know when she would begin to receive further child support payments. Because these circumstances arose after Claimant's August 2014 redetermination, they are not considered in connection with review of the Department's actions at the time it recalculated Claimant's FAP benefits. Claimant was advised to file a change report to possibly affect future FAP benefits. See BEM 505, p. 4. If she is not satisfied with the Department's action concerning any reported changes, she is advised to request a hearing.


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 FAP benefits for September 1, 2014 ongoing.

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 child support income and FAP budget for September 1, 2014, ongoing; and
2. Issue supplements to Claimant for FAP benefits she was eligible to receive but did not from September 1, 2014, ongoing.


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

Date Signed: **9/18/2014**

Date Mailed: **9/18/2014**

ACE / pf

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:

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