

**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.: 14-009062
Issue No.: 3001;6001
Case No.: ██████████
Hearing Date: October 9, 2014
County: MACOMB-DISTRICT 36

ADMINISTRATIVE LAW JUDGE: Zainab Baydoun

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 October 9, 2014, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included ██████████ ██████████, Hearings Facilitator.

ISSUE

Did the Department properly deny Claimant's application for Food Assistance Program (FAP) benefits and close her Child Development and Care (CDC) case?

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 was an ongoing recipient of CDC benefits for her son and daughter.
2. Claimant's CDC benefits for her daughter were terminated effective June 28, 2014 due to excess income. (Exhibits 4 and 10)
3. Claimant's CDC benefits for her son were terminated effective July 12, 2014, but subsequently reinstated effective July 13, 2014, on the basis that he was categorically eligible. (Exhibits 4 and 10).
4. On July 2, 2014, Claimant submitted an application for FAP benefits.

5. On July 23, 2014, the Department sent Claimant a Notice of Case Action informing her that her FAP application had been denied on the basis that her income exceeded the limit. (Exhibit 1)
6. On August 4, 2014, Claimant submitted a hearing request 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).

FAP

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.

In calculating a client's FAP benefits, all countable gross earned and unearned income available to the client must be considered in determining the Claimant's eligibility for program benefits. BEM 500 (July 2014), pp. 1 – 4. The Department determines a client's eligibility for program benefits based on the client's actual income and/or prospective income. Prospective income is income not yet received but expected. BEM 505 (July 2014), pp. 1-2. In prospecting income, the Department is required to use income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month, discarding any pay if it is unusual and does not reflect the normal, expected pay amounts. BEM 505, p. 5. The Department will use income from the past 60 or 90 days for fluctuating or irregular income if: the past 30 days is not a good indicator of future income and the fluctuations of income during the past 60 or 90 days appear to accurately reflect the income that is expected to be received in the benefit month. BEM 505, pp.5-6.

A standard monthly amount must be determined for each income source used in the budget. BEM 505, p. 7. Income received biweekly is converted to a standard amount by multiplying the average of the biweekly paychecks by the 2.15 multiplier. BEM 505, pp. 7-8. The Department is to also apply a 20% earned income deduction to Claimant's gross countable earned income. BEM 550 (February 2014), p. 1.

Child support is money paid by an absent parent(s) for the living expenses of children and is considered unearned income. The total amount of court-ordered direct support (which is support an individual receives directly from the absent parent or the Michigan

State Disbursement Unit (MiSDU)) is counted as unearned income and is considered in the calculation of a client's gross unearned income. BEM 503 (July 2014), pp. 6-9. When prospectively budgeting unearned income from child support, the Department is to use the average of child support payments received in the past three calendar months, unless changes are expected, excluding any unusual amounts or those not expected to continue. BEM 505, pp. 3-4. In addition, the Department considers the gross amount of money earned from Supplemental Security Income (SSI) in the calculation of unearned income for purposes of FAP budgeting. BEM 503, pp. 31-32.

At the hearing, the FAP EGD Net Income Results budget was reviewed to determine if the Department properly denied Claimant's FAP application on the basis that her income exceeded the limit. (Exhibit 2). The Department concluded that Claimant had earned income of \$1963 which it testified came from Claimant's employment. The Department stated that in calculating Claimant's earned income, it considered her biweekly pay of \$961.53. Although Claimant confirmed that she does receive biweekly pay of \$961.53, after further review and applying the prospective budgeting policy referenced above, Claimant's gross monthly earned income does not total \$1963, as calculated by the Department. Therefore, the Department did not properly calculate Claimant's earned income.

The Department concluded that Claimant had unearned income of \$1580 which it testified came from SSI benefits for Claimant's disabled son and child support. The Department testified that it considered \$694.90 in SSI benefits received by Claimant's son, which Claimant confirmed was correct. The Department also presented an SOLQ in support of its testimony. (Exhibit 9).

In calculating the unearned income from child support, the Department testified that it considered the three month average (April 2014, May 2014, and June 2014) of child support payments received on behalf of Claimant's four children. The Department provided testimony concerning the figures used to calculate the average of Claimant's child support payments for the three months; however, the figures found on the child support search provided are inconsistent with the Department's testimony. (Exhibit 3). Although the figures used by the Department for the months of May 2014 and June 2014 are correct, the Department's testimony that Claimant received \$87.25 in child support for each of her four children for the month of April 2014 is not supported by the amount found on child support search for the month of April 2014. After further review of the child support search provided, the child support payments for the month of April 2014 appear to be unusually large, and should have been excluded from the calculation of unearned income entirely. Therefore, it was unclear based on the inconsistencies in the evidence presented how the Department calculated the unearned income from child support. Therefore, the Department did not properly calculate Claimant's total unearned income.

The budget shows that the Department properly applied the \$190 standard deduction applicable to Claimant's confirmed group size of five. RFT 255 (December 2013), p.1.

The FAP budget shows that the Department determined Claimant's excess shelter deduction was \$0. A review of the Excess Shelter Deduction (ESD) budget provided shows that the Department considered housing costs in the amount of \$997; however, Claimant disputed this amount and stated that her monthly rental expense is \$1037. BEM 554 (May 2014), pp. 1, 14-15. The ESD budget also shows that the Department considered \$127 for the non-heat electric standard, \$74 for the water and/or sewer standard and \$34 for the telephone standard, however, the heat and utility standard was not applied. (Exhibit 2, p.3).

Under the revised policy, the \$553 mandatory heat and utility (h/u) standard is available only for FAP groups (i) that are responsible for heating expenses separate from rent or mortgage; (ii) that are responsible for cooling (including room air conditioners); (iii) whose heat is included in rent or fees **if** the client is billed for excess heat, has received the home heating credit in an amount greater than \$20 in the current month or the immediately preceding 12 months, or has received a Low-Income Home Energy Assistance Act (LIHEAP) payment or a LIHEAP payment was made on his behalf; (iv) whose electricity is included in rent or fees **if** the landlord bills the client separately for cooling; or (v) who have any responsibility for heating/cooling expense. BEM 554, pp. 16-19; RFT 255, p. 1. FAP groups not eligible for the h/u standard who have other utility expenses or contribute to the cost of other utility expenses are eligible for the individual utility standards that the FAP group has responsibility to pay. BEM 554, p. 19.

In this case, Claimant testified that she has heating expenses that the Department failed to consider and that she had previously provided verification of her expenses to the Department. Therefore, because the Department did not consider Claimant's heating expenses, she was not given the benefit of the \$553 h/u standard available to her. As such, the Department did not properly calculate Claimant's ESD, which is used to determine Claimant's eligibility for FAP benefits.

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 because of the errors in the calculation of Claimant's earned income, unearned income, and excess shelter deduction, the Department did not act in accordance with Department policy when it denied Claimant's FAP application on the basis that her income exceeded the limit.

CDC

The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, 42 USC 601-619, 670-679c, and 1397-1397m-5; the Child Care and Development Block Grant of 1990, PL 101-508, 42 USC 9858 to 9858q; and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193. The program is implemented by 45 CFR 98.1-99.33. The Department administers the program pursuant to MCL 400.10 and provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001-.5020.

In this case, the Department testified that Claimant was an ongoing recipient of CDC benefits; however, she was no longer eligible to receive CDC benefits for her son and daughter because her income exceeded the limit for CDC benefits. On July 22, 2014, the Department sent Claimant a CDC Client Certificate/Notice of Authorization informing her that CDC payments after June 28, 2014, would not be authorized for her daughter and that payments after July 12, 2014, would not be authorized for her son. (Exhibit 4). Claimant requested a hearing to dispute the CDC case closure.

At the hearing, it was established that after receiving Claimant's hearing request, the Department reinstated CDC benefits for Claimant's son effective July 13, 2014, ongoing, on the basis that he was categorically eligible. The Department presented an August 18, 2014 Notice of Case Action reflecting the approval, and Claimant confirmed that there was no longer any issue with respect to the CDC benefits for her son. (Exhibit 10). Claimant raised concerns at the hearing concerning the closure of her daughter's CDC case, however. Although the CDC Client Certificate/Notice of Authorization does not provide a reason for the closure, a review of the Notice of Case Action sent in August 2014, establishes that the Department determined Claimant was no longer eligible for CDC benefits for her daughter effective June 28, 2014, based on excess income.

In order to be eligible for CDC benefits, the group must have gross income that falls within the income scale found in RFT 270. RFT 270 (December 2013), p.; BEM 703 (July 2013); BEM 205 (July 2013); BEM 525 (July 2013). The CDC income limit for Claimant's five person CDC group is \$2746. RFT 270, p.1. The Department testified that it determined that Claimant had gross monthly income of \$3529, which included earned income in the amount of \$1963 and unearned income in the amount of \$1566. The Department stated that in calculating the income, it relied on the same information and figures used to determine her income for FAP purposes.

Because of the errors in the calculation of Claimant's earned and unearned income, discussed above, the Department has failed to satisfy its burden in establishing that it acted in accordance with Department policy when it determined that Claimant was ineligible for CDC benefits for her daughter effective June 28, 2014, on the basis that her income exceeded the limit.

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. Register and process Claimant's July 2, 2014, application for FAP benefits;

2. Issue supplements to Claimant for any FAP benefits that she was entitled to receive but did not from July 2, 2014, ongoing;
3. Reinstate Claimant's CDC case effective June 28, 2014;
4. Issue supplements to Claimant and her CDC provider from June 28, 2014, ongoing; and
5. Notify Claimant in writing of its decision.



Zainab Baydoun
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **10/14/2014**

Date Mailed: **10/14/2014**

ZB / cl

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:

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