

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-013777
Issue No.: 3008
Case No.: [REDACTED]
Hearing Date: November 18, 2014
County: Delta

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 November 18, 2014, from Lansing, Michigan. Participants on behalf of Claimant included the Claimant's husband as an adult member of the benefit group. Participants on behalf of the Department of Human Services (Department) included [REDACTED] and [REDACTED]

ISSUE

Did the Department properly determine the Claimant's eligibility for Food Assistance Program (FAP) benefits?

FINDINGS OF FACT

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

1. The Claimant is an ongoing Food Assistance Program (FAP) recipient.
2. The members of the Claimant's benefit group receive total monthly Retirement, Survivors, and Disability Insurance (RSDI) in the gross monthly amount of \$ [REDACTED]
3. The Claimant's husband receives self-employment income but does not receive any positive net income.
4. The Claimant is approved for Food Assistance Program (FAP) benefits in the monthly amount of \$ [REDACTED] effective November 1, 2014.
5. On October 15, 2014, the Department received the Claimant's request for a hearing protesting the amount of his Food Assistance Program (FAP) benefits.

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.

Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness. The Michigan Administrative Hearing System (MAHS) may grant a hearing for any of the following:

MAHS may grant a hearing about any of the following:

- Denial of an application and/or supplemental payments.
- Reduction in the amount of program benefits or service.
- Suspension or termination of program benefits or service.
- Restrictions under which benefits or services are provided.
- Delay of any action beyond standards of promptness.
- For FAP only, the current level of benefits or denial of expedited service. Department of Human Services Bridges Administrative Manual (BAM) 600 (March 1, 2014), p 4.

A request for hearing must be in writing and signed by the claimant, petitioner, or authorized representative. Rule 400.904(1). Moreover, the Department of Human Services Bridges Administrative Manual (BAM) 600 (March 1, 2014), p. 5, provides in relevant part as follows:

The client or authorized hearing representative has *90 calendar days from the date of the written notice of case action to request a hearing*. The request must be received anywhere in DHS within the 90 days. [Emphasis added.]

The Claimant's representative testified that he is a licensed provider of medical marijuana and that the Department has improperly used this information to have his home searched contrary to state laws that are intended to guard his privacy. The Claimant's representative testified that the Department has improperly transferred information about his marijuana growing activities to other government agencies in a manner contrary to state law.

Alleged violations of state medical marijuana laws by the Department are not a matter that fall within the jurisdiction of the Michigan Administrative Hearing System (MASH) and this Administrative Law Judge lacks the authority to hear or decide upon the representative's grievances with respect to his rights as a medical marijuana provider.

All earned and unearned income available to the Claimant is countable. Earned income means income received from another person or organization or from self-employment for duties for duties that were performed for compensation or profit. Unearned income means all income that is not earned, including but not limited to funds received from the Family Independence Program (FIP), State Disability Assistance (SDA), Child Development and Care (CDC), Medicaid (MA), Social Security Benefits (RSDI/SSI), Veterans Administration (VA), Unemployment Compensation Benefits (UCB), Adult Medical Program (AMA), alimony, and child support payments. The amount counted may be more than the client actually receives because the gross amount is used prior to any deductions. Department of Human Services Bridges Eligibility Manual (BEM) 500 (July 1, 2014).

The Claimant is an ongoing Food Assistance Program (FAP) recipient as a group of four. The Claimant and her children receive Retirement, Survivors, and Disability Insurance (RSDI) in the total gross monthly amount of \$ [REDACTED] a fact not disputed by the Claimant's representative. The Claimant's husband receives monthly self-employment income as a medical marijuana provider but receives no positive net income. The Claimant's adjusted gross income of \$ [REDACTED] was determined by reducing their gross monthly income by the standard \$ [REDACTED] deduction. The Claimant's excess shelter deduction of \$ [REDACTED] was determined by adding his monthly housing expenses of \$ [REDACTED] to the standard heat and utility deduction and subtracting 50% of his adjusted gross income.

The Claimant's net income of \$ [REDACTED] was determined by subtracting the excess shelter deduction from the adjusted gross income. A group of four with a net income of \$ [REDACTED] is entitled to a \$ [REDACTED] month allotment of Food Assistance Program (FAP) benefits.

The representative argued that his marijuana growing expenses are not being counted when determining their eligibility for the Food Assistance Program (FAP). The representative referenced marijuana growing literature as support of the expense for his marijuana growing operations. The representative testified that his medical marijuana growing activities operate at a loss because it is his custom to give away medical marijuana to those in need.

The amount of self-employment income before any deductions is called total proceeds. Countable income from self-employment equals the total proceeds minus allowable expenses of producing the income. If allowable expenses exceed the total proceeds, the amount of the loss cannot offset any other income except for farm loss amounts. Department of Human Services Bridges Eligibility Manual (BEM) 502 (August 1, 2014), p 1.

The Department provided substantial evidence that it is allowing the Claimant to apply expenses against self-employment income and it is presumed that these expenses have been verified in accordance with policy. The Claimant is not entitled to apply a net loss to eligibility for Food Assistance Program (FAP) benefits.

The representative testified that the Department improperly designated the proceeds from medical marijuana as self-employment income.


Individuals who run their own businesses are self-employed. This includes but is not limited to selling goods, farming, providing direct services, and operating a facility that provides services such as adult foster care home or room and board. BEM 502.

The Claimant failed to establish that he is an employee of a medical marijuana operation and the Department properly classified this income as self-employment income in accordance with BEM 502. Furthermore, if the income was not considered to be self-employment income, he would not be entitled to have the total proceeds reduced by his medical marijuana growing expenses.

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 acted in accordance with Department policy when it determining the Claimant's eligibility for the Food Assistance Program (FAP).

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.



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

Date Signed: **11/19/2014**

Date Mailed: **11/19/2014**

KS/las

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:

