

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

IN THE MATTER OF:



Reg. No.: 14-001545, 201434482
Issue No.: 3001
Case No.: [REDACTED]
Hearing Date: May 29, 2014
County: Oakland County DHS #3

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 May 29, 2014, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED].

ISSUE

Did the Department properly deny the Claimant's application 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 applied for Food Assistance Program (FAP) benefits at some point in June of 2013, as a group of one
2. The Claimant meets the Department's definition of a senior, disabled, or disabled veteran (SDV) person.
3. Since receiving the Food Assistance Program (FAP) application, the Department has received requests for hearings on August 22, 2013; October 1, 2013; April 9, 2014; April 28, 2014, each time protesting the Department's denial of Food Assistance Program (FAP) benefits.
4. The Michigan Administrative Hearing System (MAHS) conducted hearings (Reg. 20142895 and 201364748) on September 19, 2013, and November 4, 2013, where the Department was found to have not acted in accordance with policy when it denied the Claimant's Food Assistance Program (FAP) application.

5. A hearing (Reg. 201434482) was scheduled for May 13, 2014, to settle the Claimant's hearing request received by the Department on April 9, 2013; this hearing was dismissed, the dismissal was vacated on May 30, 2014; a hearing rescheduled for June 2, 2014; then combined with a hearing held on May 29, 2014, since it covered the same issue.
6. A hearing (Reg. 14-001545) was held on May 29, 2014, after being dismissed and the dismissal vacated on May 13, 2014, and this hearing was combined with another request for a hearing (Reg. 201434482).
7. The Claimant receives monthly Retirement, Survivors, and Disability Insurance (RSDI) in the gross monthly amount of \$ [REDACTED]
8. The Claimant is responsible for a Part B Medicare premium in the monthly amount of \$ [REDACTED]
9. The Claimant has other medical expenses in the amounts of \$ [REDACTED] incurred on July 14, 2013, and \$ [REDACTED] incurred on August 10, 2013.
10. The Claimant is responsible for a monthly shelter expense in the monthly amount of \$ [REDACTED]
11. The Department notified the Claimant on April 3, 2014, and April 21, 2014, that his application for Food Assistance Program (FAP) benefits had been denied as of July 1, 2014.

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 Department notified the Claimant that his Food Assistance Program (FAP) application had been denied on April 3, 2014, and April 21, 2014, and received his requests for hearings within 90 days. This Administrative Law Judge finds that the Claimant's requests for hearings are timely, and that the issue presented is whether the Department acted in accordance with policy when it denied Food Assistance Program (FAP) as of July 1, 2014.

The Department's representative testified that Food Assistance Program (FAP) benefits were issued for June of 2014, but that these benefits were issued in error. This Administrative Law Judge finds that this issue is beyond the scope of this hearing since there is no evidence on the record of a timely request for a hearing with respect to a notice of case action covering June of 2014.

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, 2013).

The Claimant receives monthly Retirement, Survivors, and Disability Insurance (RSDI) in the gross monthly amount of \$ [REDACTED]. The Claimant does not dispute that this

represents his gross monthly earnings, and the Department applies gross earnings to its determination of eligibility for the Food Assistance Program (FAP) as directed by BEM 500.

However, the Department uses certain expenses to determine net income for Food Assistance Program (FAP) eligibility and benefits levels. Department of Human Services Bridges Eligibility Manual (BEM) 554 (May 1, 2014), p 1.

On September 27, 2013, the Claimant was found to be a senior, disabled, or disabled veteran by order of the Michigan Administrative Hearing System, and no evidence was presented on the record that the Department appealed the findings of that hearing. Therefore the Claimant is eligible to have medical expenses allowable by BEM 554 considered when determining his Food Assistance Program (FAP) eligibility.

The Department determines a Food Assistance Program (FAP) recipient's adjusted gross income by subtracting allowable medical expenses over \$ [REDACTED] from total monthly countable income. Department of Human Services Bridges Eligibility Manual (BEM) 556 (July 1, 2013), p 556. It appears that after determining that the Claimant is a senior, disabled, or disabled veteran, that the Claimant's ongoing \$ [REDACTED] Medicare Part B premium is being considered as a monthly medical expense because a \$ [REDACTED] medical deduction (rounding to the dollar) is included in the Food Assistance Program (FAP) budget. It does not appear that a \$ [REDACTED] medical expense incurred on July 14, 2013, was included in the FAP budget, and the Department failed to adequately explain what this expense was not countable against total monthly income.

This Administrative Law Judge finds that it is not relevant as to whether the Department was aware of these expenses in July of 2013, because the Department issued a new eligibility determination on April 21, 2014, and was apparently aware of the expense at that time.

The Claimant argued that he has additional medical expenses that the Department failed to account for in its determination of his eligibility for Food Assistance Program (FAP) benefits. The Claimant testified that he has other medical expenses associated with his treatment by Veteran's Administration that are deducted directly from his Retirement, Survivors, and Disability Insurance (RSDI) benefits.

The Department argued that these expense that cover costs incurred through the Veteran's Administration are not countable because they are overdue, and that policy does not allow them to be deducted from countable income.

The medical bill is not overdue if one of the following conditions exists:

- Currently incurred (for example, in the same month, ongoing, etc.).
- Currently billed (client is receiving the bill for the first time for a medical expense provided earlier and the bill is not overdue).
- Client made a payment arrangement before the medical bill became overdue. BEM 554.

The production of evidence to support the department's position is clearly required under BAM 600 as well as general case law (see e.g., *Kar v Hogan*, 399 Mich 529; 251 NW2d 77 [1976]). In *McKinstry v Valley Obstetrics-Gynecology Clinic, PC*, 428 Mich167; 405 NW2d 88 (1987), the Michigan Supreme Court addressed the issue of burden of proof, stating in part:

The term "burden of proof" encompasses two separate meanings. [citation omitted.] One of these meanings is the burden of persuasion or the risk of nonpersuasion. The other is the risk of going forward or the risk of nonproduction. The burden of producing evidence on an issue means the liability to an adverse ruling (generally a finding or a directed verdict) if evidence on the issue has not been produced. It is usually on the party who has pleaded the existence of the fact, but..., the burden may shift to the adversary when the pleader has discharged [its] initial duty. The burden of producing evidence is a critical mechanism[.]

The burden of persuasion becomes a crucial factor only if the parties have sustained their burdens of producing evidence and only when all of the evidence has been introduced.

McKinstry, 428 Mich at 93-94, quoting McCormick, *Evidence* (3d ed), Sec. 336, p. 946.

The Department failed to present evidence to establish whether the Claimant is responsible for countable medical expenses that are being deducted from his monthly Retirement, Survivors, and Disability Insurance (RSDI) benefits.

The Claimant argued that he has a monthly shelter expenses for insurance on his rented home.

Property taxes, state and local assessments and insurance on the structure are allowable expenses, but the Department will not allow insurance costs for the contents of the structure, for example, furniture, clothing and personal belongings. BEM 554, p 13.

This Administrative Law Judge finds that the Claimant failed to establish that he has is responsible for a monthly shelter expenses for insurance that is intended to cover the structure, and not the contents of the structure. The Department will determine eligibility for the Food Assistance Program (FAP) without regard to unverified shelter expenses. BEM 554, p 14.

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 acted in accordance with Department policy when it denied the Claimant's Food Assistance Program (FAP) application as of July 1, 2013.

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. Allow the Claimant a ten-day period to provide verification of his medical expenses incurred for each month since July 1, 2013.
2. Allow the Claimant a ten-day period to clarify the nature of any deductions from his gross Retirement, Survivors, and Disability Insurance (RSDI) income.
3. Allow the Claimant a ten-day period to clarify the nature of any home or rental insurance the Claimant is responsible for.
4. Initiate a determination of the Claimant's eligibility for the Food Assistance Program (FAP) as of July 1, 2013.
5. Provide the Claimant with a Notice of Case Action (DHS-1605) describing the Department's revised eligibility determination.
6. Issue the Claimant any retroactive benefits he may be eligible to receive, if any.


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

Date Signed: **6/5/2014**

Date Mailed: **6/5/2014**

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:

