

**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.: 14-007194
Issue No.: 1000; 1001; 1010; 3004
Case No.: ██████████
Hearing Date: August 21, 2014
County: WAYNE-DISTRICT (31)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

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 August 21, 2014, from Detroit, Michigan. Participants on behalf of Claimant included Claimant, ██████████. Participants on behalf of the Department of Human Services (Department or DHS) included ██████████ ██████████ Hearings Facilitator; and ██████████, Case Manager.

ISSUES

1. Whether the Department properly determined that Claimant has exceeded the lifetime limit on Family Independence Program (FIP) benefits and was not eligible for an exception to the time limit?
2. Whether Claimant is eligible for approximately six months of supplemental FIP benefits from 2010?
3. Whether the Department properly processed Claimant's reported change (employment ending) effective August 1, 2014?
4. Whether the Department properly calculated Claimant's FAP benefits effective August 1, 2014, ongoing?
5. Whether the Department complied with an Administrative Law Judge's (ALJ) Decision and Order (D&O) dated July 27, 2012?

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. See Exhibit 1, pp. 8-9 and 13.
2. On July 26, 2012, Claimant attended a previous administrative hearing in which she disputed the closure of her FIP benefits based on a non-compliance with work related activities.
3. On July 27, 2012, the ALJ sent a D&O in which it ordered the Department to reinstate Claimant's FIP case as of July 1, 2012 and remove her three month sanction. (See Reg. #2012-58097).
4. On July 14, 2014, Claimant applied for FIP benefits.
5. On July 17, 2014, the Department notified Claimant that her FIP application was denied effective August 1, 2014, because she had exceeded the 48-month lifetime limit for state-funded FIP assistance as of September 1, 2012. Exhibit 1, pp. 6-7.
6. The Department processed Claimant's change report (employment ending) to affect her FAP allotment for August 1, 2014, ongoing. See Exhibit 1, p. 13.
7. Claimant's Benefit Summary Inquiry indicated a recoupment amount for her FAP benefits, which resulted in a decrease in FAP benefits. See Exhibit 1, pp. 18-19.
8. On July 14, 2014, Claimant filed a hearing request, protesting her FAP and FIP benefits. See Exhibit 1, p. 2.

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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Family Independence Agency) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101 to .3131.

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.

FAP benefits

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (April 2014), p. 9. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, p. 9. Income reporting requirements includes the stopping of employment (earned income). BAM 105, p. 9.

For FAP cases, the Department acts on a change reported by means other than a tape match within 10 days of becoming aware of the change. BAM 220 (January 2014), p. 6. Changes which result in an increase in the household's benefits must be effective no later than the first allotment issued 10 days after the date the change was reported, provided any necessary verification was returned by the due date. BAM 220, pp. 6-7.

In this case, Claimant testified that she reported to the Department in May 2014 that her last date of employment was June 18, 2014. It should be noted that there was subsequent testimony that indicated that the fax was possibly sent in April 2014, notifying employment end in May 2014. Nevertheless, Claimant testified that she faxed to the Department pay stubs to notify the Department that her employment ended. In fact, at the conclusion of the hearing, the Department agreed to fax Claimant's alleged documents sent in May 2014 (Exhibit A). However, it was discovered subsequent to hearing that the documentation had not been faxed and/or not presented at the time of hearing.

At the hearing, the Department testified that at her hearing conference (pre-hearing conference dated July 25, 2014 (see Exhibit 1, p. 3)), it was able to conduct a collateral contact to confirm loss of employment and verify her May and June (2014) check stubs received. See Exhibit 1, p. 1. As such, Claimant's FAP benefits increased for the time period of August 1, 2014, ongoing, in the amount of \$347. See Exhibit 1, p. 13. However, Claimant disputed that she only received a lesser amount due to the Department recouping FAP benefits. Claimant acknowledged that the Department recouped FAP benefits from her; however, she alleged that the recoupment amount had been sufficed approximately two years ago. A recoupment specialist (RS) was not present at the hearing to rebut Claimant's testimony.

The Department presented Claimant's Benefit Summary Inquiry, which showed that the Department was currently recouping from her FAP allotment. See Exhibit 1, pp. 18-19.

When the client group or CDC provider receives more benefits than entitled to receive, DHS must attempt to recoup the overissuance. BAM 725 (May 2014), p. 1. Administrative Recoupment (AR) is an automated Department process that reduces current DHS benefits in order to obtain repayment on overissuances for a program. BAM 725, p. 1.

FAP benefits are reduced for recoupment by a percentage of the monthly FAP entitlement (the entitlement amount is the amount of FAP a group would receive if any intentional program violation-disqualified members were included in the eligible group). BAM 725, p. 7. Administrative recoupment occurs only on current month issuances and automatically changes when the monthly issuance amount changes. BAM 725, p. 7. The standard administrative recoupment percentage for FAP is addressed in BAM 725, p. 7. For example, 20 percent (or \$20, whichever is greater) for intentional program violation. BAM 725, p. 7.

Based on the foregoing information and evidence, the Department acted in accordance with Department policy when it processed Claimant's change report (employment ending) with an effective date of August 1, 2014.

First, Claimant alleged she notified the Department in May 2014 that her employment would end in June 2014 and that the documents would be provided as Exhibit A for the record. However, as stated previously, the documentation was not received as Claimant's Exhibit A subsequent to the hearing. Nevertheless, the Department credibly testified that it conducted a collateral contact to confirm loss of employment and verify her May and June (2014) check stubs received at the hearing conference. See Exhibit 1, p. 1. The evidence presented that there was a pre-hearing conference conducted on July 25, 2014. See Exhibit 1, p. 3. Because the collateral contact was conducted in July 2014, Claimant's August 2014 benefits will be the first month affected because the 10th day after the change is reported falls in the next benefit period. See BAM 220, pp. 6-7.

Second, the evidence presented that Claimant currently has AR from her FAP benefits. See Exhibit 1, pp. 18-19. Moreover, an RS was not present at the hearing to rebut Claimant's allegation that she should not have any such recoupment. As such, the Department failed to satisfy its burden of showing that it properly calculated Claimant's FAP benefits effective August 1, 2014, ongoing. This hearing decision will not order the Department to terminate any further AR from the Claimant's FAP benefits. However, the Department will recalculate Claimant's FAP benefits effective August 1, 2014, ongoing and also review/inquiry into Claimant's recoupment amount for the same time period. BAM 725, pp. 1 and 7.

FIP application

The FIP benefit program is not an entitlement. BEM 234 (July 2013), p. 1. Under the state FIP time limit, effective October 1, 2011, BEM 234 states that individuals are not eligible for continued FIP benefits once they receive a cumulative total of 48 months of FIP benefits. The 48-month lifetime limit for state-funded FIP cases allows exemption months in which an individual does not receive a count towards the individual's 48-month lifetime limit. BEM 234, p. 4. Exemption months are months the individual is deferred from Partnership. Accountability. Training. Hope. (PATH) for: (i) domestic violence; (ii) being 65 years of age or older; (iii) a verified disability of long-term incapacity lasting longer than 90 days; or (iv) a spouse or parent who provides care for a spouse or child with verified disabilities living in the home. BEM 234, p. 4; MCL 400.57a (4); Bridges Federal Time Limit Interim Bulletin (BPB) 2013-006 (March 1, 2013), p 1.

In this case, on July 14, 2014, Claimant applied for FIP benefits. On July 17, 2014, the Department notified Claimant that her FIP application was denied effective August 1, 2014, because she had exceeded the 48-month lifetime limit for state-funded FIP assistance as of September 1, 2012. Exhibit 1, pp. 6-7.

At the hearing, the Department presented as evidence Claimant's Michigan FIP Time Limit document. See Exhibit 1, pp. 4-5. The evidence showed that that Claimant had received a cumulative total of 48 months or more of FIP benefits as of September 2012. See Exhibit 1, pp. 4-5. Thus, at the time of her application, Claimant exceeded the 48-month lifetime limit and was not eligible for FIP benefits. Claimant testified that she last received cash benefits approximately two years ago (on or around 2012).

Based on the foregoing evidence and testimony, the Department properly denied Claimant's FIP application effective August 1, 2014, ongoing, in accordance with Department policy. Once an individual reaches a FIP time limit and the FIP closes, the individual is not eligible for FIP if the individual reapplies and meets any exemption criteria. BEM 234, p. 7. The evidence presented that Claimant is not eligible for FIP benefits because she had exceeded the 48-month lifetime limit on receipt of FIP assistance as of September 2012. See Exhibit 1, pp. 4-5 and BEM 234, pp. 1 and 7.

Supplemental FIP benefits

Claimant also disputed that the Department owed her for six months of supplemental FIP benefits from the year 2010. Claimant testified that she was on a medical deferral and that she did not receive FIP benefits during this time period. Moreover, Claimant appeared to testify that she had a previous hearing in which the ALJ ordered the Department to supplement Claimant for her FIP benefits.

A review of Claimant's FIP Eligibility Summary appeared to indicate that she actually received FIP benefits for the entire period of 2010. See Exhibit 1, p. 14. Also, on July 26, 2012, Claimant attended a previous administrative hearing in which she disputed the closure of her FIP benefits based on a non-compliance with work related activities. On July 27, 2012, the ALJ sent a D&O in which it ordered the Department to reinstate Claimant's FIP case as of July 1, 2012 and remove her three month sanction (see Reg. #2012-58097). A review of the D&O did not mention any order to supplement the Claimant for FIP benefits from 2010 (see Reg. #2012-58097).

Based on the foregoing information and evidence, this ALJ lacks the jurisdiction to address Claimant's dispute for supplemental FIP benefits from 2010.

First, Claimant's allegation that the previous ALJ ordered the Department to supplement her FIP benefits from 2010 is found not credible. A review of the D&O did not mention any order to supplement the Claimant for FIP benefits from 2010 (see Reg. #2012-58097).

Second, regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in Mich Admin Code, R 400.901 through R 400.951. Rule 400.903(1) provides as follows:

An opportunity for a hearing shall be granted to an applicant who requests a hearing because [a] claim for assistance is denied or is not acted upon with reasonable promptness, and to any recipient who is aggrieved by a Department action resulting in suspension, reduction, discontinuance, or termination of assistance.

A request for hearing must be in writing and signed by the claimant, petitioner, or authorized representative. Mich Admin Code, R 400.904(1). Moreover, the Department of Human Services BAM 600 (July 2014), p. 6, 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.]

In the present case, this hearing lacks the jurisdiction to address Claimant's dispute for supplemental FIP benefits from 2010. As such, Claimant's dispute for supplemental FIP benefits from 2010 is DIMISSED for lack of jurisdiction. BAM 600, pp. 4-6.

It should also be noted that Claimant disputed that upon reinstatement of her FIP case after the July 2012 hearing, she contested that she only received one month of FIP benefits. However, a review of Claimant's FIP Eligibility Summary showed that she received FIP benefits for July, August, and September of 2012. See Exhibit 1, p. 16.

As such, the Department properly complied with the D&O as her FIP benefits were reinstated (see Reg. #2012-58097). See BAM 600, pp. 40-42. Claimant's FIP benefits appeared to subsequently close effective October 1, 2012 because she reached the FIP time limit. See Exhibit 1, pp. 4-5 and 16.

DECISION AND ORDER


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 (i) acted in accordance with Department policy when it denied Claimant's FIP eligibility effective August 1, 2014, ongoing, for exceeding the 48-month lifetime limit for state-funded FIP assistance as of September 1, 2012; (ii) acted in accordance with Department policy when it processed Claimant's change report (employment ending) to affect her FAP benefits for August 1, 2014; (iii) the Department failed to satisfy its burden of showing that it properly calculated Claimant's FAP benefits effective August 1, 2014, ongoing; (iv) Claimant's dispute for supplemental FIP benefits from 2010 is DISMISSED for lack of jurisdiction; and (v) the Department properly complied with the administrative hearing D&O dated July 27, 2012 (see Reg. #2012-58097).

Accordingly, the Department's decision is AFFIRMED IN PART with respect to FIP denial, lack of jurisdiction for supplemental FIP benefits, Claimant's reported change (employment ending) effective August 1, 2014, and the administrative hearing D&O dated July 27, 2012 (see Reg. #2012-58097) and REVERSED IN PART with respect to Claimant's FAP benefits effective August 1, 2014.

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. Begin recalculating Claimant's FAP benefits effective August 1, 2014, including a review/inquiry into Claimant's recoupment amount and in accordance with Department policy;
2. Issue supplements to Claimant for any FAP benefits she was eligible to receive but did not from August 1, 2014; and

3. Notify Claimant in writing of its FAP decision in accordance with Department policy.



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

Date Signed: **8/28/2014**

Date Mailed: **8/28/2014**

EJF/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

