

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

IN THE MATTER OF:



Reg. No.: 14-007610
Issue No.: 3001
Case No.: [REDACTED]
Hearing Date: August 26, 2014
County: Midland

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 August 26, 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 close the Claimant's 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 was an ongoing Food Assistance Program (FAP) recipient.
2. On July 22, 2014, the Department redetermined the Claimant's eligibility for the Food Assistance Program (FAP) and notified her that her benefits would close as of August 1, 2014.
3. On July 25, 2014, the Department received the Claimant's request for a hearing protesting the closure of her 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.

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 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).

All income is converted to a standard monthly amount. If the client is paid weekly, the Department multiplies the average weekly amount by 4.3. If the client is paid every other week, the Department multiplies the average bi-weekly amount by 2.15. Department of Human Services Bridges Eligibility Manual (BEM) 505 (July 1, 2013), pp 6-7.

In this case, the Claimant was an ongoing Food Assistance Program (FAP) recipient as a group of three when the Department reviewed her eligibility to receive continuing benefits. The Department had incorrectly classified her military pension as earned income instead of unearned income.

For purposes of determining eligibility for the Food Assistance Program (FAP), earned income is reduced by a 20% earned income deduction while there is no such deduction for unearned income. Department of Human Services Bridges Eligibility Manual (BEM) 550 (February 1, 2014), p 1.

On July 22, 2014, the Department determined that the Claimant is not eligible to receive continuing Food Assistance Program (FAP) benefits as a group of three based on its revised determination of her monthly income.

The Claimant receives a monthly prospective earned income of \$ [REDACTED] which was determined by multiplying her average bi-weekly gross income by the 2.15 conversion factor. The Claimant's total unearned income of \$ [REDACTED] is the sum of her military pension, and average of the child support payments she has received over a three month period. BEM 503. The Claimant's adjusted gross income of \$ [REDACTED] was determined by subtracting the standard \$ [REDACTED] deduction from the total of her earned income less the 20% earned income deduction and her unearned income. The Claimant's excess shelter deduction was determined by adding her monthly shelter expense of \$ [REDACTED] to the standard \$ [REDACTED] heat and utility deduction, and subtracting 50% of her adjusted gross income.

The Claimant's net income of \$ [REDACTED] was determined by subtracting her excess shelter deduction from her adjusted gross income. A group of three with a net income of \$ [REDACTED] is not eligible to participate in the Food Assistance Program (FAP).

The Claimant argued that her most recent earned income was higher than normal due to holiday pay and does not reflect her future earnings.

Although the Claimant did have a temporary increase in her earnings, the holiday pay was not an unexpected circumstance and her receipt of holiday pay is a factor that is likely to continue in the future. The Department adjusted benefits based on varying income, and if the Claimant receives lesser income in the future, she is eligible to reapply for benefits.

The Claimant provided documentation of expenses that the Department did not consider when determining her Food Assistance Program (FAP) eligibility.

While the Claimant's expenses reduce the funds she has available for food purchases, the Department may only apply the expenses outlined in BEM 554 when determining eligibility for benefits. In this case, the Claimant failed to identify any expenses listed in BEM 554 that the Department failed to apply towards her eligibility for benefits.

The Claimant argued that it would be in the best interest of her children to continue receiving Food Assistance Program (FAP) benefits and that it would be unjust to close these benefits after they have become accustomed to receiving them.

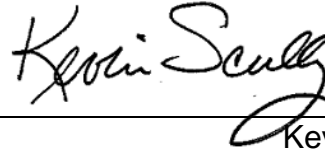
The Claimant has the burden of establishing that she is eligible for benefits. In this case, the Claimant has failed to establish that she is eligible for benefits based on the evidence provided on the record showing how her income makes her ineligible.

The Claimant's argued that closing her Food Assistance Program (FAP) benefits amounts to child abuse and the Department should continue her benefits for the benefit of her children. The Claimant also argued that she is deserving of Food Assistance Program (FAP) benefits because of her efficient use of these benefits. The Claimant's arguments center on dissatisfaction with the Department's current policy. The Claimant's request is not within the scope of authority delegated to this Administrative Law Judge. Administrative Law Judges have no authority to overrule promulgated regulations, or make exceptions to the Department policy set out in the program manuals. Administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940).

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 closed the Claimant's Food Assistance Program (FAP) benefits due to excess income.

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: **8/28/2014**

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

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:

