

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-009999
Issue No.: 3008
Case No.: [REDACTED]
Hearing Date: September 17, 2014
County: Montmorency

ADMINISTRATIVE LAW JUDGE: Darryl Johnson

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 September 17, 2014, from Lansing, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included Family Independence Specialist [REDACTED], Eligibility Specialist [REDACTED], and Assistance Payments Supervisor [REDACTED].

ISSUE

Did the Department properly reduce 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. Claimant was an on-going FAP recipient.
2. Claimant receives child support from the fathers of her two sons.
3. Claimant received unusually large amounts of child support for one of her sons in September 2013, March 2014, and May 2014.
4. The Department calculated Claimant's income by averaging the child support she received over a 12-month period (without including the amount received in March 2014) and budgeting her FAP based on that average.
5. Claimant's FAP was reduced effective July 1, 2014. See Notice of Case Action (NCA) dated June 17, 2014. (Exhibit 1 Page 21.)

6. On August 21, 2014, the Department received Claimant's hearing request.

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.

Child support is considered "unearned income." See BEM 503. Per BEM 505, child support is generally averaged over a three-month period if the amount of income fluctuates. "Use the average of child support payments received in the past three calendar months, unless changes are expected. Include the current month if all payments expected for the month have been received. Do not include amounts that are unusual and not expected to continue." The issue can center on whether the amounts are "unusual and not expected to continue."

BEM 505 goes on to state, "If the past three months' child support is not a good indicator of future payments, calculate an expected monthly amount for the benefit month based on available information and discussion with the client." The testimony is convincing that the past three months' child support in this case is not a good indicator of future payments. Claimant's child support income is reflected on pages 11-15 of Exhibit 1. There are months when Claimant did not receive any child support for her one son. Claimant explained that one of the large amounts was because of a tax refund that was captured by the state from the child's father, and the other two lump sums were from a worker's compensation claim that the father had been compensated for. She also testified that neither of those events was likely to occur again.

Claimant has testified persuasively that the amounts are unusual and not expected to continue. The Department erred in basing her budget on an average that included two of the large amounts. Those should have been disregarded and her income based upon the average of the past three calendar months, exclusive of the large sums.

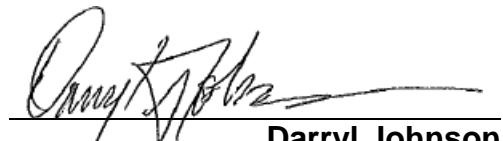
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with Department policy when it based Claimant's income for FAP budget purposes upon the lump sums she had received..

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. Redetermine Claimant's FAP benefit eligibility, effective July 1, 2014;
2. Issue a supplement to Claimant for any benefits improperly not issued.



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

Date Signed: **9/22/2014**

Date Mailed: **9/22/2014**

DJ/jaf

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:

