

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 14-015079  
Issue No.: 3008  
Case No.: [REDACTED]  
Hearing Date: December 3, 2014  
County: Oakland (3) (Southfield)

**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, three-way telephone hearing was held on December 3, 2014, from Lansing, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist [REDACTED].

**ISSUE**

Due to excess income, did the Department properly close Claimant's case for Food Assistance Program (FAP)?

**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 received FAP benefits.
2. On October 16, 2014, the Department mailed notice to Claimant that his FAP would be closed as of October 1, 2014 due to excess income.
3. On October 29, 2014, Claimant filed a hearing request, protesting the Department's actions.

**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), and Department of Human Services Reference Tables Manual (RFT).

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.

Claimant owns a business which he operates as a Limited Liability Company. He provided the Department with several monthly profit and loss statements (Exhibit 1 Pages 4-9), each of which shows a loss. None of the statements shows any wages paid to Claimant. They do, however, show that the business received income each month. The business income<sup>1</sup> in 2014 was: May \$ [REDACTED] June \$ [REDACTED] July \$ [REDACTED] August \$ [REDACTED] September \$ [REDACTED] October \$ [REDACTED]

The Department's position was that an LLC is not self-employment "and the total income from the profit and loss statements was input as income earned for the client." As stated in BEM 502 (8/1/14) at page 1, "Note: S-Corporations and Limited Liability Companies (LLCs) are not self-employment." What is missing from the evaluation of his eligibility is reference to BEM 501 (7/1/14) which instructs the Department that, when it comes to an LLC and an S-Corporation, "Bridges counts the income a client receives from an S-Corp or LLC as wages, even if the client is the owner; see WAGES." At page 6, the instruction is: "Wages are the pay an employee receives from another individual organization or S-Corp/LLC. Wages include salaries, tips, commissions, bonuses, severance pay and flexible benefit funds not used to purchase insurance."

The difference between self-employment and LLC/Sub-S wages is that, as expressed at BEM 502 page 3:

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. See **Farming Expenses** below.

**Example:** An individual operates a retail store. Total proceeds for the month are \$3,200. Allowable expenses total \$3,800. The \$600 deficit **cannot** be used to offset any other income.

Allowable expenses (except MAGI related MA) are the higher of 25 percent of the total proceeds, or actual expenses if the client chooses to claim and verify the expenses.

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<sup>1</sup> Some months, such as June, list a negative income for [REDACTED] [REDACTED] as a reduction in ordinary income. For purposes of determining "income" those line items are disregarded herein. Also, some months, such as June, also list "other income". Although those lines are identified as income, they are not included herein as "income". No opinion is expressed as to whether those should or should not be included as "income" for purposes of determining Claimant's monthly income because no evidence was presented to substantiate them.

The Department determined that he was not self-employed, and consequently did not allow him any deduction for expenses associated with the business. That was an error. Because he operates an LLC, his application should have been reviewed as provided in BEM 501.

There is concern that an individual operating a sole-member LLC could elect not to pay himself any wages in order to establish eligibility for FAP and other benefits. The Department has means available to determine whether assets, including bank accounts, are countable in determining eligibility for benefits. If he is using business accounts to pay personal expenses, that is a commingling, and the business accounts are included as an asset. See BEM 400 (1/1/15) at page 21.

Use this exclusion only if the funds are **not** commingled with countable assets and **not** in time deposits.

Exclude a savings, share, checking or draft account used **solely** for the expenses of a business. Continue the exclusion while the business is not operating, provided the person intends to return to the business.

The Administrative Law Judge, based upon 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 found Claimant ineligible for FAP.

### **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 eligibility, effective October 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: **12/5/2014**

Date Mailed: **12/5/2014**

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 48909-8139

cc:

