

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-016830
Issue No.: 3008
Case No.: [REDACTED]
Hearing Date: January 06, 2015
County: Gogebic

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, telephone hearing was held on January 06, 2015, from Lansing , Michigan. Participants on behalf of Claimant included [REDACTED] Participants on behalf of the Department of Human Services (Department) included [REDACTED] and [REDACTED]

ISSUE

Did the Department properly determine the amount of the Claimant's monthly Food Assistance Program (FAP) allotment?

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 is an ongoing Food Assistance Program (FAP) recipient as a group of one.
2. On November 5, 2014, the Department notified the Claimant that it would reduce his monthly allotment of Food Assistance Program (FAP) benefits to \$ [REDACTED]
3. On November 18, 2014, the Department received the Claimant's request for a hearing protesting the amount of his monthly allotment of 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, 2014).

The Claimant is an ongoing Food Assistance Program (FAP) recipient as a group of one. The Claimant's sole source of income is a retirement benefit for his service in the military. The Department considers all income to be countable unless excluded by Department policy. BEM 500, p3.

However, the Claimant does not receive the entire amount of his retirement benefits awarded by the federal government. The Claimant's former spouse has claimed half this retirement income under the authority of the Uniformed Services Former Spouses' Protection Act (USFSPA), 10 USC 1408, which recognizes the right of state courts to distribute military retired pay to a spouse or former spouse.

It is not disputed that the Claimant is divorced or that his former spouse receives a portion of his military retirement. The dispute here is whether the Department should consider the former spouse's portion of this income as countable income to the Claimant.

The Department offered 93 pages of printed policy supporting its decision. The Department also submitted the opinion of its central office policy unit supporting a finding that the former spouse's portion of this income is countable income to the Claimant, although this opinion does not specifically contain any supporting citations. It should be noted here that the Department has the burden to establish that it is acting in accordance with policy.

The Claimant argued that since the entire amount of his military retirement benefit is not taxable to him, it should not be countable to him by the Department.

This Administrative Law Judge is not persuaded by this argument. The applicability of federal income tax laws towards the Claimant's military retirement benefits is not relevant here. How the Claimant's retirement benefits are distributed or how they are taxed is not relevant here. What are relevant are the Department's policies under the authority of statutes enacted by the Michigan legislature.

Based on the evidence and testimony on the record during the hearing, this Administrative Law Judge finds the Claimant's military retirement benefits to fit the Department's definition of jointly receive income and Department policy does exclude the former spouse's portion of the Claimant's military retirement from countable income.

Income is received jointly if the payment is made in the name of more than one individual other than a representative. Income received jointly is available. Absent evidence to the contrary, each individual is considered to have an equal share. Divide joint income equally among the recipients of the income. BEM 500, p 7.

The evidence on the record supports a finding that the former spouse's share of the benefits is not a deduction from the Claimant's unearned income, but a splitting of this jointly received income as a result of their divorce settlement and the authority of the Uniformed Services Former Spouses' Protection Act (USFSPA). This finding is supported by the retiree account statement and federal taxation documents contained in the record.

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 determined the Claimant's monthly allotment for the Food Assistance Program (FAP) based on the entire amount of his military retirement benefit.


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. Initiate a determination of the Claimant's eligibility for the Food Assistance Program (FAP) as of November 1, 2014.
2. Provide the Claimant with a Notice of Case Action (DHS-1605) describing the Department's revised eligibility determination.

3. Issue the Claimant any retroactive benefits he may be eligible to receive, if any.



Kevin Scully
Administrative Law Judge
for Nick Lyon, Acting DHS Director
Department of Human Services

Date Signed: **1/12/2015**

Date Mailed: **1/12/2015**

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:

