

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

IN THE MATTER OF:

██████████
██████████
██████████

Reg. No.: 2014-10579
Issue No.: 3008
Case No.: ██████████
Hearing Date: December 4, 2013
County: Wayne (19)

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 December 4, 2013, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department or DHS) included ██████████ Assistant Payment Worker.

ISSUE

Did the Department properly calculate Claimant's Food Assistance Program (FAP) allotment effective November 1, 2013, ongoing?

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.
2. On October 5, 2013, the Department sent Claimant a Notice of Case Action notifying her that her FAP benefits decreased to \$15 effective November 1, 2013, ongoing. Exhibit 1.
3. On October 28, 2013, Claimant filed a hearing request, protesting her FAP allotment. See Exhibit 1.

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 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 and Mich Admin Code, R 400.3001 to .3015.

Preliminary matters

First, Claimant testified that she was disputing her FAP allotment from April 2013, ongoing. The Michigan Administrative Hearing System (MAHS) may grant a hearing for FAP only when it is in regards to the current level of benefits or denial of expedited service. See BAM 600 (July 2013), p. 4.

Based on this information, this hearing decision will not address Claimant's FAP allotment from April 2013. Moreover, a review of Claimant's eligibility summary and FAP budgets from September 2013, ongoing, indicated the same FAP income calculations used to determine her allotments. Also, a review of the hearing request does not indicate that Claimant is disputing past FAP allotments. See Exhibit 1. Claimant requested a hearing and is disputing her amount of benefits based on a budget calculated for November 2013, ongoing. Thus, this hearing decision will only address Claimant's FAP allotment for November 1, 2013, ongoing.

Second, Claimant also disputed a change report and subsequent verification issues that occurred in November 2013. This change report submission and subsequent verification requests happened after Claimant's hearing request. Thus, this hearing decision will not address the subsequent actions taken.

FAP allotment

Claimant is an ongoing recipient of FAP benefits. See Exhibit 1. On October 5, 2013, the Department sent Claimant a Notice of Case Action notifying her that her FAP benefits decreased to \$15 effective November 1, 2013, ongoing. See Exhibit 1.

It was not disputed that the certified group size is two and that the FAP group does not contain a senior/disabled/disabled veteran (SDV) member. The Department presented the November 2013 FAP budget for review. See Exhibit 1. The Department calculated Claimant's gross earned income to be \$1,663. See Exhibit 1.

A group's financial eligibility and monthly benefit amount are determined using: actual income (income that was already received) or prospected income amounts (not received but expected). BEM 505 (July 2013), p. 1. Only countable income is included in the determination. BEM 505, p. 1. Each source of income is converted to a standard monthly amount, unless a full month's income will not be received. BEM 505, p. 1. The Department converts stable and fluctuating income that is received more often than monthly to a standard monthly amount. BEM 505, p. 6. The Department uses one of the following methods: (i) multiply weekly income by 4.3; (ii) multiply amounts received every two weeks by 2.15; or (iii) add amounts received twice a month. BEM 505, pp. 7-8.

The Department testified that it calculated her gross earned income based upon a submitted redetermination. Moreover, the Department testified that the gross earned income is calculated by its system when the income information is entered in.

Claimant disputed the calculation of her gross earned income. Claimant testified that she is paid biweekly, earns \$8.23 an hour, and works approximately 40 hours a week. Converting Claimant's biweekly pay to a standard monthly amount, this results in an approximate standard amount of \$1,415. See BEM 505, pp. 7-8.

The local office and client or authorized hearing representative will each present their position to the ALJ, who will determine whether the actions taken by the local office are correct according to fact, law, policy and procedure. BAM 600 (July 2013), p. 33. Both the local office and the client or authorized hearing representative must have adequate opportunity to present the case, bring witnesses, establish all pertinent facts, argue the case, refute any evidence, cross-examine adverse witnesses, and cross-examine the author of a document offered in evidence. BAM 600, pp. 33-34. The ALJ determines the facts based only on evidence introduced at the hearing, draws a conclusion of law, and determines whether DHS policy was appropriately applied. BAM 600, p. 35.

Based on the foregoing information, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it was unable to testify on how it calculated Claimant's gross earned income. The Department failed to present testimony on how it specifically calculated Claimant's gross earned income other than its system resulting in the calculation. Moreover, Claimant provided testimony which would indicate a lower gross earned income amount. Thus, the Department will initiate verification of Claimant's earned income and recalculate her benefits effective November 1, 2013, ongoing.

It should be noted that the Department calculated Claimant's unearned income to be \$51, which consisted of her child support. However, Claimant testified that she only received \$51 in child support for August 2013. Claimant testified that she did not receive any other amounts for September or October 2013; in fact, Claimant testified that she only received \$51 for the entire year in child support. The Department uses the average of child support payments received in the past three calendar months, unless changes are expected. BEM 505, p. 3. The Department was unable to show how it calculated the unearned income.

Based on this information, the Department will also initiate verification of Claimant's unearned income and recalculate her benefits effective November 1, 2013, ongoing.

Additionally, the Department properly applied the \$151 standard deduction applicable to Claimant's group size of two. RFT 255 (October 2013), p. 1.

Then, Claimant testified that the FAP group does not contain any SDV members. For groups with no SDV members, the Department uses the excess shelter maximum in RFT 255. RFT 255, p. 1. RFT 255 indicates that the standard shelter maximum for non-SDV members is \$478. RFT 255, p. 1.

The Department presented an excess shelter budget from her Notice of Case Action (dated October 5, 2013), which indicated Claimant's monthly housing expense is \$167. See Exhibit 1. Claimant, though, testified that her monthly housing expense is \$191 for October 2013 and \$301 for November 2013. Claimant testified that she reported the change for the October rent in the beginning of October 2013. Also, Claimant testified that she reported the November rent change online on November 3, 2013 and in-person on November 4, 2013. The Department testified that it did not receive a reported change for the October 2013 rent.

Other changes must be reported within 10 days after the client is aware of them. BAM 105 (October 2013), p. 9. These include, but are not limited to, changes in shelter cost changes. BAM 105, p. 9. For FAP case, 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 (July 2013), 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, p. 6.

Based on this information, Claimant credibly testified that she reported the shelter cost changes to the Department. The Department will also initiate verification of Claimant's shelter costs and apply the appropriate amount for the November 2013 budget in accordance with Department policy. See BAM 220, p. 6.

It should be noted that the Department gives a flat utility standard to all clients responsible for utility bills. BEM 554 (July 2013), pp. 12-13. The utility standard of \$553 (see RFT 255, p. 1.) encompasses all utilities (water, gas, electric, telephone) and is unchanged even if a client's monthly utility expenses exceed the \$553 amount.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it improperly calculated Claimant's FAP benefits effective November 1, 2013, ongoing.

Accordingly, the Department's FAP 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. Begin recalculating the FAP budget for November 1, 2013, ongoing, in accordance with Department policy;
2. Initiate verification of Claimant's unearned/earned income and shelter costs in accordance with Department policy;
3. Issue supplements to Claimant for any FAP benefits she was eligible to receive but did not from November 1, 2013, ongoing; and
4. 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: December 10, 2013

Date Mailed: December 10, 2013

NOTICE OF APPEAL: The claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely Request for Rehearing or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request (60 days for FAP cases).

A Request for Rehearing or Reconsideration may be granted 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.

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The Department, AHR or the claimant 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 the hearing decision is mailed.

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

EJF/cl

cc:

[REDACTED]
[REDACTED]
[REDACTED] Hearing Decisions
FAP