

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

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No.: 2014-10970
Issue No(s): 3008;5000
Case No.: [REDACTED]
Hearing Date: December 5, 2013
County: Wayne (76)

ADMINISTRATIVE LAW JUDGE: Zainab Baydoun

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 5, 2013, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Assistance Payment Supervisor.

ISSUE

Did the Department properly process Claimant's Food Assistance Program (FAP) and State Emergency Relief (SER) 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 ongoing recipient of FAP benefits.
2. On October 12, 2013, the Department sent Claimant a Notice of Case Action informing her that effective November 1, 2013, her FAP case would be closed on the basis that the group's net income exceeded the limit. (Exhibit 1)
3. On an unverified date, Claimant submitted a request for SER assistance that the Department did not timely process.
4. On October 29, 2013, Claimant submitted a hearing request disputing 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), Department of Human Services Reference Tables Manual (RFT), and Department of Human Services Emergency Relief Manual (ERM).

SER

The State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by the Department (formerly known as the Family Independence Agency) pursuant to MCL 400.10 and by Mich Admin Code, R 400.7001 through R 400.7049.

The hearing was requested to dispute the Department's action taken with respect to Claimant's request for SER assistance. Shortly after commencement of the hearing, the Department testified and Claimant confirmed that the Department had resolved the issues concerning Claimant's request for SER assistance and that the action had been corrected. Claimant testified that she understands and is satisfied with the actions taken by the Department and that she no longer had any issues to address with respect to her SER case. Claimant confirmed that she did not wish to proceed with the hearing concerning SER. The Request for Hearing was withdrawn. The Department agreed to the dismissal of the hearing request. Pursuant to the withdrawal of the hearing request filed in this matter, the Request for Hearing regarding the SER case is hereby **DISMISSED**.

FAP

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.

Additionally, all countable earned and unearned income available to the client must be considered in determining the Claimant's eligibility for program benefits. BEM 500 (July 2013), pp. 1 – 3. The Department determines a client's eligibility for program benefits based on the client's actual income and/or prospective income. Prospective income is income not yet received but expected. BEM 505 (July 2013), p. 1. In prospecting income, the Department is required to use income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month, discarding any pay if it is unusual and does not reflect the normal, expected pay amounts. BEM 505, p.5. A standard monthly amount must be determined for each income source used in the budget. BEM 505, p. 7. Income received weekly is converted to a standard amount by multiplying the average of the weekly paychecks by the 4.3 multiplier. BEM 505, pp. 8. The Department is to apply a 20% earned income deduction to Claimant's total earned income. BEM 550 (July 2013), p. 1

Additionally, the gross amount of money earned from Supplemental Security Income (SSI) is included in the calculation of unearned income for purposes of FAP budgeting. BEM 503 (July 2013), pp. 32. State SSI Payments (SSP) are issued quarterly and the monthly SSP benefit amount is counted as unearned income. BEM 503, p.33.

At the hearing, the FAP EDG Net Income Results budget for the November 1, 2013 benefit period was reviewed. (Exhibit 4). The Department concluded that Claimant had earned income of [REDACTED]. In calculating Claimant's earned income, the Department testified that it considered (i) \$[REDACTED] paid on [REDACTED]; (ii) [REDACTED] on [REDACTED] paid on [REDACTED] paid on [REDACTED]. The Department provided copies of the paystubs relied on and submitted by Claimant in support of its calculation. After further review, the Department did not properly calculate Claimant's earned income, as the average of the weekly paystubs multiplied by 4.3 does not total [REDACTED].

The Department concluded that Claimant had unearned income in the amount of [REDACTED] which came from monthly SSI benefits of [REDACTED] for two of Claimant's children and [REDACTED] monthly SSP benefits for two of Claimant's children. Claimant disputed the amounts relied on by the Department and stated that one of her children only receives \$639 in SSI monthly due to a [REDACTED] monthly withholding based on a previous overpayment. According to BEM 500, amounts deducted by an issuing agency to recover a previous overpayment or ineligible payment are not part of gross income and are excluded as income. BEM 500 (July 2013), p. 5. Claimant provided a letter from the [REDACTED] [REDACTED] support of her testimony. (Exhibit A). Therefore, the Department did not properly calculate Claimant's unearned income.

Additionally, Claimant raised concerns regarding the Department's disqualification of her son as a group member based on his status as a student. The Department testified that because Claimant's son attends college out of state, he is ineligible to receive FAP benefits and therefore, determined Claimant's FAP group size was nine.

A person who is in student status and does not meet the criteria in BEM 245 is a non-group member and is not eligible to receive FAP benefits. BEM 212 (July 2013), p. 9. A person enrolled in a post-secondary education program may be in student status and eligible for FAP assistance, provided that certain eligibility criteria are met. BEM 245 (July 2013), pp.3-5.

At the hearing, Claimant testified that her son is [REDACTED] and enrolled as a full time student at a college out of state. Claimant stated that her son is not physically or mentally unfit for employment but that she is not sure whether or not her son is employed for at least [REDACTED] hours per week. Claimant testified that her son does participate in a work study program and although she stated she notified the Department about his work study participation, she did not submit verification of his participation. Claimant confirmed that her son is not a single parent nor does he provide more than half of the physical care of a group member under the age of six. BEM 245, pp.2-4.

Based on the above information and additional testimony provided at the hearing by both Claimant and the Department, Claimant's son does not meet any of the criteria found in BEM 245; and is therefore not eligible to receive FAP benefits. BEM 245, pp.2-4.

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 although the Department properly excluded Claimant's son as a FAP group member, because of the errors in the calculation of Claimant's earned and unearned income, the Department did not act in accordance with Department policy when it closed Claimant's FAP case effective November 1, 2013, due to her income exceeding the limit.

DECISION AND ORDER

Accordingly, Claimant's hearing request with respect to SER is DISMISSED and 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. Reinstate Claimant's FAP case effective November 1, 2013;
2. Recalculate Claimant's FAP budget for November 1, 2013, ongoing;
3. Issue supplements to Claimant for any FAP benefits that she was entitled to receive but did not from November 1, 2013, ongoing; and
4. Notify Claimant in writing of its decision.



Zainab Baydoun
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: December 10, 2013

Date Mailed: December 11, 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.

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

ZB/tm

cc:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]