

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-23721
Issue No.: 3008
Case No.: [REDACTED]
Hearing Date: February 20, 2014
County: Ingham

ADMINISTRATIVE LAW JUDGE: Susanne E. Harris

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 February 20, 2014, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED]. Participants on behalf of the Department of Human Services (Department) included Family Independence Specialist, [REDACTED] and Eligibility Specialist, [REDACTED].

ISSUE

Did the Department properly take action to reduce the Claimant's monthly 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 was an ongoing recipient of monthly FAP benefits in the amount of \$ [REDACTED].
2. On January 9, 2014, the Department sent the Claimant a DHS-1605, Notice of Case Action informing the Claimant that, as of February 1, 2014, her monthly FAP allotment would be reduced to \$ [REDACTED].
3. On January 14, 2014, the Department received the Claimant's written hearing request protesting the reduction in her FAP allotment.

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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10 and 400.57a and Mich Admin Code, R 400.3101 to .3131.

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.

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

The Adult Medical Program (AMP) is established by 42 USC 1315 and is administered by the Department pursuant to MCL 400.10.

The State Disability Assistance (SDA) program is established by the Social Welfare Act, MCL 400.1-.119b. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.10 and Mich Admin Code, R 400.3151-.3180.

The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, 42 USC 601-619, 670-679c, and 1397-1397m-5; the Child Care and Development Block Grant of 1990, PL 101-508, 42 USC 9858 to 9858q; and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193. The program is implemented by 45 CFR 98.1-99.33. The Department administers the program pursuant to MCL 400.10 and provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001-.5020.

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.

Direct Support Services (DSS) is established by the Social Welfare Act, MCL 400.1-.119b. The program is administered by the Department pursuant to MCL 400.10 and 400.57a and Mich Admin Code R 400.3603.

The State SSI Payments (SSP) program is established by 20 CFR 416.2001-.2099 and the Social Security Act, 42 USC 1382e. The Department administers the program pursuant to MCL 400.10.

In this case, the Claimant was adamant that her employment hours had not changed at all since the beginning of the year. The Claimant is a [REDACTED] and she testified that occasionally she adds a bit to her employment hours by accepting a [REDACTED]. The Department's ES testified that she averaged the Claimant's income for the month of October, November and December 2013 because the Claimant's income fluctuates.

Additionally, Bridges Eligibility Manual (BEM) 505 (2013) p. 2, defines fluctuating income is income received on a regular schedule but that varies from check to check, such as a [REDACTED] whose hours vary each week. It instructs the Department's worker to determine budgetable income using countable, available income for the benefit month being processed. It instructs Department workers to use actual gross income amounts received for past month benefits, converting to a standard monthly amount, when appropriate. The Department's worker is to use past income to prospect income for the future unless changes are expected. Specifically, the Department's worker is to use income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month. BEM 505 p. 5, provides that a worker should discard a pay from the past 30 days if it is unusual and does not reflect the normal, expected amounts.

In this case, the Department's worker averaged the Claimant's income for the last three months. A close examination of the [REDACTED] considered reveals that there were only [REDACTED] which were unusual. Those [REDACTED] occurred in [REDACTED] [REDACTED] and one was unusually high and the other was unusually low, but for each of those three months considered the Claimant's monthly income, before applying the Department's formula, ranged anywhere from [REDACTED]. In this case, the Administrative Law Judge concludes that the Claimant's income for the past 30 days was a good indicator of future income. The Administrative Law Judge concludes that the Department should not have averaged the Claimant's income over a three-month period.

During the hearing, the Department asserted that the Claimant's income and employment hours had increased since the beginning of the year. This testimony was vehemently contested by the Claimant. There was no documentary evidence in the record to establish that the Claimant's income has changed. The Department's worker present at the hearing could not articulate with any specificity how it is that the Claimant's income or hours had changed. There was no FAP budget in evidence. As such, the Administrative Law Judge determines that the evidence is insufficient to

establish that the Department was acting in accordance with its policy when taking action to reduce the Claimant's monthly FAP allotment.

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 took action to reduce the Claimant's monthly FAP allotment.

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. Re-determine the Claimant's eligibility for FAP back to February 1, 2014, and
2. Issue the Claimant any supplement she may thereafter be due.



Susanne E. Harris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 2/21/14

Date Mailed: 2/24/14

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

SEH/tb

cc:

