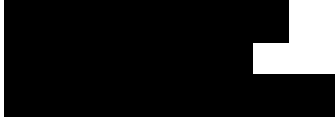


**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:



Reg. No.: 2014-28084
Issue No(s): 3008
Case No.: [REDACTED]
Hearing Date: March 17, 2014
County: Wayne (17)

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 March 17, 2014, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department or DHS) included [REDACTED], Family Independence Manager, and [REDACTED], Assistant Payment Worker.

ISSUE

Did the Department properly calculate Claimant's Food Assistance Program (FAP) allotment and group composition effective January 22, 2014, 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. On January 22, 2014, Claimant applied for FAP benefits for a group size of four and indicated in the application that she is a U.S. citizen. See Exhibit 1.
2. On January 22, 2014, the Department sent Claimant a Verification Checklist (VCL), which requested verification of her citizenship and it was due back by February 3, 2014.
3. On January 28, 2014, Claimant submitted verification of her U.S. citizenship.

4. On February 4, 2014, the Department sent Claimant a Notice of Case Action notifying her that she was approved for FAP benefits for a group size of three in the amount of \$81 effective January 22, 2014 to January 31, 2014. See Exhibit 1.
5. On February 4, 2014, the Notice of Case Action also notified Claimant that she was approved for FAP benefits for a group size of three effective February 1, 2014, ongoing, in the amount of \$253. See Exhibit 1.
6. On February 14, 2014, 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.

FAP group composition

On January 22, 2014, Claimant applied for FAP benefits for a group size of four and indicated in the application that she is a U.S. citizen. See Exhibit 1. On January 22, 2014, the Department sent Claimant a VCL, which requested verification of her citizenship and it was due back by February 3, 2014. The Department testified that its system indicated that she was disqualified due to citizenship reasons. On January 28, 2014, Claimant submitted verification of her U.S. citizenship. On February 4, 2014, the Notice of Case Action indicated that the FAP group size is three for her prorated January 2014 benefits and February 2014 benefits. See Exhibit 1. However, it appears that Department applied a group size of four effective March 1, 2014, ongoing. See Eligibility Summary, Exhibit 1. Upon verification, the Department did not dispute that Claimant is a U.S. citizen.

If a group member is identified on the application as a U.S. citizen, do not require verification unless the statement about citizenship is inconsistent, in conflict with known facts or is questionable. BEM 225 (January 2014), p. 1. A person must be a U.S. citizen or have an acceptable alien status for the designated programs. BEM 225, p. 1.

Based on the foregoing information and evidence, the Department failed to satisfy its burden of showing that it acted in accordance with Department when it improperly calculated Claimant's FAP group composition. On January 22, 2014, Claimant properly indicated on her application that she was a U.S. citizen. See Exhibit 1. Moreover,

Claimant even provided such verification when she submitted it on January 28, 2014. The Department accepted the verification because her group size increased to four on March 1, 2014. See Exhibit 1. If a group member is identified on the application as a U.S. citizen, do not require verification unless the statement about citizenship is inconsistent, in conflict with known facts or is questionable. BEM 225, p. 1. It appears that the Department requested verification because of a FAP disqualification it had for the Claimant via its system. However, the Department failed to present sufficient evidence to show why her statement about citizenship is inconsistent, in conflict with known facts or is questionable in order to request such verification. See BEM 225, p. 1. Nevertheless, the evidence shows that Claimant is a U.S. citizen and she verified it when requested upon. Thus, the Department will apply a group size of four to her FAP benefits effective January 22, 2014, ongoing. BEM 225, p. 1. Furthermore, the Department will recalculate her FAP benefits and issue supplements that she is eligible to receive but did not from January 22, 2014, ongoing.

FAP budget for January 2014

On February 4, 2014, the Department sent Claimant a Notice of Case Action notifying her that she was approved for FAP benefits for a group size of three in the amount of \$81 effective January 22, 2014 to January 31, 2014. See Exhibit 1.

As stated above, the FAP group size should be four. Moreover, the FAP group does not contain a senior/disabled/disabled veteran (SDV) member. The Department presented the January 2014 FAP budget for review. See Exhibit 1. The Department calculated Claimant's gross earned income to be \$1,621. See Exhibit 1. At first, the Department testified that it calculated the earned income based on the following pay stubs: pay date of December 7, 2013, biweekly pay, gross amount of \$998.74; and pay date of December 21, 2013, biweekly pay, gross amount of \$1,011.92. Claimant did not dispute the pay stub amounts. Converting Claimant's biweekly pay to a standard monthly amount, results in total amount of \$2,161. See BEM 505 (July 2013), pp. 7-8.

However, the January 2014 budget had a total gross earned income amount of \$1,621, which is less than the amount calculated above. It should be noted that the March 2014 budget calculated a gross earned income amount of \$2,161. See Exhibit 1. Nonetheless, the March 2014 budget is not discussed in this hearing decision due to lack of jurisdiction. See BAM 600 (March 2014), pp. 4-6. It appears the calculation difference is based upon Claimant's disqualification status at the time.

For FAP benefits, the disqualified person's assets and income might have to be considered based on the program(s) requested (i.e., Claimant). BEM 225, pp. 1-2. BEM 550 also states that the Department budgets a pro rata share of earned and unearned income for a person disqualified for not meeting citizenship/alien status requirements or for refusal to declare citizenship/alien status. BEM 550 (February 2014), p. 3. Each source of income is prorated individually as follows:

1. The number of eligible FAP group members is added to the number of disqualified persons that live with the group.

2. Next the disqualified/ineligible person's income is divided by the number of persons in step 1.
3. Then the result in step 2 is multiplied by the number of eligible group members.

BEM 550, p. 4. The Department does not apply these rules to the income of eligible group members, or non-group members. BEM 550, p. 4.

Based on the above policy, it appears that the Department calculated Claimant's income on a prorated share due to her disqualification. For step one, the result is four (three eligible FAP group members plus one disqualified person). BEM 550, p. 4. For step two, Claimant's \$2,161 income is divided by four, which results in a total of \$540.25. BEM 550, p. 4. For Step 3, the result in step 2 is multiplied by the number of eligible group members, which is \$1,621 (rounded-up) (\$540.25 times 3). BEM 550, p. 4. It appears that this is how the Department budgeted Claimant's pro rata share of earned income because she was person disqualified for not meeting citizenship/alien status requirements or for refusal to declare citizenship/alien status. BEM 550, p. 3.

Nevertheless, as stated in the previous section, the Department failed to satisfy its burden of showing that it acted in accordance with Department when it improperly calculated Claimant's FAP group composition. The Department failed to present sufficient evidence to show why Claimant was disqualified due to citizenship/alien status requirements. Therefore, the Department should have budgeted her income as an eligible group member and not based on a prorated share. See BEM 505, pp. 1-14. Therefore, the Department will recalculate Claimant's earned income by applying the rules to the income of eligible group members and in accordance with Department policy. BEM 550, pp. 3-4 and BEM 505, pp. 1-14.

Additionally, the Department presented Claimant's shelter budget, which indicated her monthly housing expenses is \$351.28. See Exhibit 1. Claimant disputed this amount. Claimant testified her mortgage is \$400. Moreover, the Department testified that it calculated Claimant's shelter expenses as follows: \$400 for mortgage, \$251.53 for property taxes, and \$99.75 for homeowners insurance. It was unclear why the Department did not budget these amounts for January 2014. A review of Claimant's application indicated that she reported \$400 in mortgage, homeowners insurance, and property taxes. See Exhibit 1.

For groups with no SDV member, the Department allows excess shelter up to the maximum as listed in RFT 255. See BEM 554 (February 2014), p. 1. RFT 255 indicated that the shelter maximum for deduction is \$478. RFT 255 (December 2013), p. 1. The Department verifies shelter expenses at application and when a change is reported. BEM 554, p. 14. If the client fails to verify a reported change in shelter, remove the old expense until the new expense is verified. BEM 554, p. 14. The Department verifies the expense and the amount for housing expenses, property taxes, assessments, insurance and home repairs. BEM 554, p. 14.

Based on the foregoing information and evidence, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it improperly calculated Claimant's shelter expense effective January 22, 2014, ongoing. The Department failed to present evidence of why it only calculated \$351.28 for her shelter expenses. Moreover, the Department confirmed that it budgeted a higher shelter expense in its system. It was unclear why the Department did not budget the amounts listed above. Thus, the Department will also recalculate Claimant's shelter expenses in accordance with Department policy effective January 22, 2014, ongoing. BEM 554, p. 1 and 14

Also, the Department gives a flat utility standard to all clients responsible for utility bills. BEM 554, pp. 14-15. 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.

FAP budget for February 2014

On February 4, 2014, the Notice of Case Action also notified Claimant that she was approved for FAP benefits for a group size of three effective February 1, 2014, ongoing, in the amount of \$253. See Exhibit 1.

At the hearing, the Department presented the February 2014 FAP budget for review. See Exhibit 1. The February 2014 FAP budgeted the same calculations as the January 2014 budget. See Exhibit 1. The February 2014 FAP budget had a certified group size of three, total gross earned income of \$1,621, and housing expenses totaling \$351.28. See Exhibit 1. As stated previously, the Department improperly calculated these amounts for January 2014. Therefore, the Department will also recalculate Claimant's February 2014 budget in accordance with Department policy (see FAP budget for January 2014 analysis above).


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 (i) failed to satisfy its burden of showing that it acted in accordance with Department policy when it improperly calculated Claimant's FAP group composition effective January 22, 2014, ongoing; and (ii) did not act in accordance with Department policy when it improperly calculated Claimant's FAP allotment effective January 22, 2014, 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 applying a certified group size of four to Claimant's FAP group effective January 22, 2014, ongoing;
2. Begin recalculating the FAP budget (including earned income and shelter expenses) for January 22, 2014, ongoing, in accordance with Department policy;
3. Issue supplements to Claimant for any FAP benefits she was eligible to receive but did not from January 22, 2014, 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: March 20, 2014

Date Mailed: March 20, 2014

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

201428084/EJF

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/tlf

cc:

