

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

IN THE MATTER OF:

[REDACTED]

Reg. No.:
Issue No(s):
Case No.:
Hearing Date:
County:

[REDACTED]

ADMINISTRATIVE LAW JUDGE: MICHAEL S. NEWELL

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 [REDACTED], from Lansing, Michigan. Participants on behalf of Claimant included Claimant and [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED], ES and [REDACTED], FIM.

ISSUE

Did the Department properly determine that Claimant and her husband were not self-employed when calculating Claimant's FAP budget?

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 [REDACTED], the Department issued a Notice of Case Action decreasing Claimant's FAP effective [REDACTED].
2. Claimant and Bovee deliver newspapers and are paid by a payer/marketer who collects from customers.
3. Claimant and Bovee each have a route in their own names but they frequently work on, or complete each other's routes.
4. The majority of the papers delivered are purchased by Claimant and Bovee at a discounted rate and sold to stores at a higher rate.
5. The markup for papers bought and sold accounts for all income for the route in Bovee's name, and the markup is about 35%.

6. The payment for these markups is not paid by the customers but by the payer/marketers.
7. Claimant and Bovee use their own vehicles or borrowed vehicles, gas and supplies to complete their routes, and these costs can vary depending on whether and other factors.
8. Claimant and Bovee set their own hours and determine the methods and times to complete their routes.
9. Claimant and Bovee are solely responsible for completing their routes, although they frequently work together or on each other's routes separately

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.

Additionally, BEM 502 provides as follows;

It is sometimes difficult to determine if an individual's income should be entered in the earned income or self-employment LUW. Make a determination based on available information and document your rationale. Use the following guidelines to help make that determination; consider the following to be indicators of self-employment:

- The individual sets own work hours.
- The individual provides own tools used on the job.
- The individual is responsible for the service being provided and for the methods used to provide the service.
- The individual collects payment for the services provided from the individual paying for them.

BEM 502 provides four factors, none of which are dispositive,, and all but one factor indicates self-employment. Claimant and her husband set their own work hours. There is no set deadline for when the papers must be delivered. Bovee opined that the payer might take issue if the papers were delivered after noon, but he had no set deadlines or negative responses from the payer about deliver times, when routes had been completed any time from 3:00 a.m. to 11:00 a.m. based on when the routes started.

With over an eight hour range, regarding when the routes could be started or end within the discretion of Claimant and Bovee, it is safe to say that the set their own work hours, or, at the very least, that this factor at least leans in favor of self-employment rather than traditional employment.

The group provides its own tools and supplies to complete the job such as vehicles and all necessary supplies. Claimant and Bovee are responsible for the service provided and the methods. The payer doesn't care who does which route or how it gets done. The payer is only concerned that it gets done.

Claimant and Bovee do not collect payment from the individual paying for them. However, this is the only factor that weighs against self-employment. The Department has placed too much emphasis on a single factor when the other three factors favor a finding of self-employment.

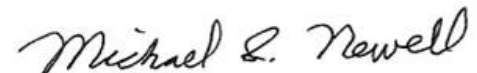
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it held that the delivery routes at issue were not self-employment.

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. Redetermine benefits from the date of benefit reduction at issue.
2. Calculate the paper routes at issue as self-employment income in accordance with policy.
3. Take any other actions necessary in implementing this Decision and Order in accordance with policy, such as requesting verification or other information if necessary.



MICHAEL S. NEWELL
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: May 23, 2014

Date Mailed: May 23, 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

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

MSN/las

cc:

