

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-017374
Issue No.: 3008
Case No.: [REDACTED]
Hearing Date: January 8, 2015
County: Clinton

ADMINISTRATIVE LAW JUDGE: Darryl Johnson

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 January 8, 2015, from Lansing, Michigan. Participants on behalf of Claimant included Claimant's husband, [REDACTED]. Participants on behalf of the Department of Human Services (Department) included Hearings Facilitator [REDACTED] and Eligibility Specialist [REDACTED].

ISSUE

Did the Department properly determine Claimant's Food Assistance Program (FAP) 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's husband applied for FAP on July 31, 2014.
2. Claimant is employed and her husband has income from delivering newspapers for the [REDACTED].
3. The Department counted the husband's income as employment income, and did not allow any deductions for costs associated with delivering the papers.
4. Based upon the household income and the group size of four, the Department awarded Claimant with FAP of \$ [REDACTED] for August 2014 and \$ [REDACTED] per month beginning September 1, 2014. See Notice of Case Action dated August 27, 2014, Exhibit 1 Pages 15-18.
5. The Department received Claimant's hearing request on November 21, 2014.

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 273. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001 to .3015.

Claimant's husband has taken the position that he should be able to deduct expenses associated with the business from his earnings. The Department's position is that he is an employee of the [REDACTED] and therefore no deductions are available.

Per BEM 502 (4/1/14) P 3, "Allowable expenses are the higher of 25 percent of the total proceeds, or actual expenses if the client chooses to claim and verify the expenses." Claimant testified that he buys two or three "beater" vehicles each year and drives them until the wheels figuratively fall off the car. He drives approximately 70,000 miles per year. He has to purchase plastic bags and rubber bands for the papers. Other than having a deadline by which the papers must be delivered, he is able to set his own hours.

BEM 501 (7/1/14) provides the Department's policy with respect to earned income. For all types of assistance, "Wages are the pay an employee receives from another individual organization or S-Corp/LLC. Wages include salaries, tips, commissions, bonuses, severance pay and flexible benefit funds not used to purchase insurance." As stated in BEM 502, p 1, "Individuals who run their own businesses are self-employed. This includes but is not limited to selling goods, farming, providing direct services, and operating a facility that provides services such as adult foster care home or room and board." Continuing at pages 1-2, BEM 502 explains:

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.

A client need not meet all of the above to be considered self-employed.

BEM 502 provides an example of someone who is self-employed. “Joe has a contract with the local hospital to provide snow removal services. He drives his own snow removal vehicle and pays for his own gas. The hospital pays him directly based on the number of times his services are used. Joe is self-employed.”

Claimant’s husband sets his own work hours. He provides his own tools used on the job. He is responsible for the service being provided (newspaper delivery) and for the methods used to provide the service. He does not collect payment for the services provided, except through weekly remittances from the [REDACTED]. This is similar to the example mentioned above. Instead of a snowplow moving snow, Claimant’s husband uses a car to move newspapers. He pays for his own gas and maintenance. The [REDACTED] pays him based upon the number of newspapers he delivers. Because of these factors, the evidence establishes that he is self-employed. The Department should allow him to deduct expenses as provided in BEM 502 at pages 3-4:

Allowable expenses include all of the following:

- Identifiable expenses of labor, stock, raw material, seed, fertilizer, etc.
- Interest and principal on loans for equipment, real estate or income-producing property.
- Insurance premiums on loans for equipment, real estate and other income-producing property.
- Taxes paid on income-producing property.
- Transportation costs while on the job (example: fuel).
- Purchase of capital equipment.
- A child care provider’s cost of meals for children. Do **not** allow costs for the provider’s own children.
- Any other identifiable expense of producing self-employment income except those listed below.

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 did not act in accordance with Department policy when it considered Claimant’s husband’s earnings from the [REDACTED] to be employment income instead of income from self-employment.

DECISION AND ORDER

Accordingly, the Department’s decision is **REVERSED**.

1. Redetermine Claimant’s FAP eligibility, effective August 1, 2014;

2. Issue a supplement to Claimant for any benefits improperly not issued.



Darryl Johnson
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **1/12/2015**

Date Mailed: **1/12/2015**

DJ/las

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS **MAY** order a rehearing or reconsideration on its own motion.

MAHS **MAY** grant a party's Request for Rehearing or Reconsideration 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 party requesting a rehearing or reconsideration 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 this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, 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 48909-8139

cc:

