

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

IN THE MATTER OF:



Reg. No.: 15-003359
Issue No.: 3001
Case No.: [REDACTED]
Hearing Date: April 8, 2015
County: Wayne (17)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 April 8, 2015, from Detroit, Michigan. Participants included the above-named Claimant. [REDACTED] appeared as Claimant's translator. Participants on behalf of the Department of Human Services (DHS) included [REDACTED], specialist.

ISSUE

The issue is whether DHS properly determined Claimant's Food Assistance Program (FAP) eligibility.

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 FAP benefit recipient.
2. Claimant was a member of a 6 person household which also included Claimant's spouse and four children.
3. Claimant received \$1044.90/month in gross Retirement, Survivor, Disability Insurance (RSDI).
4. Claimant last reported to DHS that an adult child was a full-time college student.
5. Claimant last reported to DHS that an adult child received \$680/two weeks in employment income.

6. Claimant last reported to DHS property taxes averaging \$128.90 per month.
7. As of February 2015, DHS ceased Claimant's Medicare Savings Program eligibility.
8. On an unspecified date, DHS determined Claimant's FAP eligibility, effective February 2015, based on the following: 5 FAP group members, RSDI of \$1026/month, employment income of \$1462/month, \$70 in monthly medical expenses, and \$128.90 in month housing expenses.
9. On [REDACTED], Claimant requested a hearing to dispute his FAP eligibility.

CONCLUSIONS OF LAW

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. DHS (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 and Mich Admin Code, R 400.3001 to .3015. DHS policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT).

Claimant's hearing request noted that special arrangements were required for participation in the hearing; specifically, an Arabic interpreter was noted. Claimant's AHR's request was granted and the hearing was conducted accordingly.

Claimant requested a hearing to dispute FAP eligibility. Claimant's hearing request did not specify which eligibility month was in dispute. During the hearing, Claimant was asked to specify the oldest month of FAP eligibility that he disputed. Claimant responded that he wants a hearing about his FAP eligibility from two years ago.

The client or authorized hearing representative has 90 calendar days from the date of the written notice of case action to request a hearing. BAM 600 (July 2013), p. 5. The request must be received in the local office within the 90 days. *Id.*

Claimant was asked why he would wait until March 2015 to request a hearing about FAP eligibility from two years ago. After some difficulties in obtaining an answer, Claimant responded that he wants to dispute his FAP eligibility as far back as possible.

It is known that Claimant requested a hearing on [REDACTED]. As of Claimant's hearing request date, Claimant was eligible for \$191/month in FAP benefits. It was established that DHS determined Claimant's FAP eligibility to be \$191 as of February

2015. Claimant's hearing request will be interpreted so that Claimant intended to dispute FAP eligibility since February 2015.

FAP benefit determinations factor the following: income, standard deduction, mortgage expenses utility credit, medical expenses, child support expenses, day care expenses, group size and senior/disability/disabled veteran status. During the hearing, Claimant was asked if he disputed any of the amounts within a DHS budget (Exhibits 1-3). Claimant disputed all of the following: unearned income, earned income, medical expenses, property taxes, and group size.

DHS presented a FAP budget (Exhibits 1-3) for benefit month of April 2015 determining Claimant was eligible to receive \$191/month in FAP. The presented budget was used as the source of DHS budget factors to determine Claimant's FAP eligibility.

DHS provided testimony that Claimant's sole source of unearned income was RSDI. Claimant's FAP budget verified that DHS factored \$1026 in monthly unearned income to determine Claimant's FAP eligibility.

Claimant testified that he receives \$845/month in RSDI. Claimant presented no documentation to support his testimony.

DHS presented an SOLQ (Exhibits 4-6). An SOLQ is a document that DHS obtained from a data exchange with Social Security Administration. Claimant's SOLQ listed that Claimant's gross RSDI is \$1044.90. The SOLQ is found to be a more reliable indicator of Claimant's gross income than Claimant's unverified testimony.

For all programs, Bridges (the DHS database) counts the gross benefit amount as unearned income. BEM 503 (July 2014), p. 28. It is found that Claimant's gross RSDI is \$1044.90.

In determining Claimant's FAP eligibility, DHS factored a smaller gross RSDI amount than what was verified. As DHS did not over-budget Claimant's income, Claimant is not entitled to any administrative remedy concerning RSDI.

DHS testimony indicated that earned income was prospected based on Claimant's son's two biweekly \$680 payments from March 2013. DHS converts bi-weekly non-child support income into a 30 day period by multiplying the income by 2.15. BEM 505 (July 2013), pp. 7-8. Multiplying Claimant's son's biweekly income results in \$1,462 in earned income, the same amount budgeted by DHS.

It is somewhat mystifying that DHS factored two year old wage verifications to budget Claimant's son's wage income. Generally, DHS policy requires six month reviews for FAP cases factoring employment income. (see BEM 220). DHS could not explain why March 2013 pay stubs were the most recent income verification.

Even though DHS inexplicably failed to review Claimant's FAP eligibility in over two years, clients also have procedural requirements. Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (September 2012), p. 1.

Claimant responded that his son hadn't worked in over two years. Claimant testimony conceded that he did not report to DHS that his son stopped working. When Claimant was asked why he did not think to report the income stoppage, Claimant responded that he was never asked by DHS to report the income change.

If Claimant did not report to DHS that his son stopped working, DHS cannot be faulted for relying on Claimant's most recently reported information, that his son was employed. This conclusion holds true even if DHS should have reviewed Claimant's case since 2013. It is found that DHS properly budgeted Claimant's son's employment income. Claimant was advised that the hearing could be used as the reporting date for the employment income stoppage and that he could have his FAP eligibility can be updated to affect future eligibility.

Claimant alleged that his RSDI was recently reduced due to payment of a Medicare premium. Claimant testified that the change occurred within the last couple of months. Claimant's testimony amounted to an allegation that he pays \$104.90/month in medical expenses. DHS only budgeted \$70 in medical expenses for Claimant.

The presented SOLQ verified that DHS paid Claimant's Medicare premium, but only through January 2015. The SOLQ also verified a premium expense of \$104.90. Unlike other FAP eligibility factors, Claimant's reporting is not an issue.

Until February 2015, DHS paid Claimant's Medicare premium through the Medicare Savings Program (MSP). DHS testimony stated that Claimant's failure to return a redetermination caused Claimant's termination of MSP eligibility. DHS cannot claim ignorance of Claimant's responsibility to pay a Medicare (or the amount) when DHS was the party stopping the payment. It is found that DHS should have budgeted Claimant's \$104.90 Medicare premium expense beginning February 2015.

Claimant testified that he is responsible for paying \$1330/year in property insurance. Claimant testified that he is responsible for paying \$1900/year in property taxes. Again, Claimant did not verify his testimony. Claimant testified that he submitted proof of both to DHS in 2014. DHS responded that Claimant only submitted proof of property taxes, and that the taxes were submitted in 2013. Given Claimant's failure to report a stoppage in his son's employment income and DHS' failure to redetermine Claimant's ongoing eligibility, it is probable that Claimant last reported property tax verification in 2013 and that he failed to verify insurance information. It is found that DHS properly budgeted Claimant's housing expenses. Again, Claimant can submit updated property tax information to DHS to affect future FAP eligibility.

Lastly, Claimant disputed the FAP group members factored by DHS. Claimant testified that his household includes himself, his spouse, and four children. DHS disqualified one of Claimant's children due to student status.

A person enrolled in a post-secondary education program may be in student status. BEM 245 (July 2014), p. 1. A person in student status must meet certain criteria in order to be eligible for assistance. *Id.*

A person is in student status if he/she is aged 18 through 49 years and enrolled half-time or more in either:

- a vocational, trade, business, or technical school that normally requires a high school diploma or an equivalency certificate; or
- a regular curriculum at a college or university that offers degree programs regardless of whether a diploma is required. *Id.*, p. 3.

DHS testimony indicated that Claimant's son attends college full-time. Claimant testified that his son only attends college for 5 credits per semester.

Claimant's testimony, if accepted, would justify a finding that Claimant's son attends college less than half-time, and therefore, student status is not applicable. Claimant's testimony was not particularly compelling.

During the hearing, Claimant was asked if his son attends college part-time or full-time. Claimant responded that "I think it is part-time." Claimant then was asked how many credits his son takes; Claimant responded that his son takes classes. Claimant then testified that his son takes sometimes 4 credits and sometimes 5 credits. Claimant's inability to testify with any certainty or to directly answer a question made Claimant's testimony unpersuasive. It is found that Claimant's son attends college on a full-time basis, or at least, that Claimant's last report to DHS was that his son attends school full-time.

In order for a person in student status to be eligible, they must meet one of the following criteria:

- Receiving FIP.
- Enrolled in an institution of higher education as a result of participation in:
 - A JTPA program.
 - A program under section 236 of the Trade Readjustment Act of 1974 (U. S. C. 2296).
 - Another State or local government employment and training program.
- Physically or mentally unfit for employment.
- Employed for at least 20 hours per week and paid for such employment.
- Self-employed for at least 20 hours per week and earning weekly income at least equivalent to the federal minimum wage multiplied by 20 hours.

- Participating in an on-the-job training program. A person is considered to be participating in an on-the-job training program only during the period of time the person is being trained by the employer.
- Participating in a state or federally-funded work study program (funded in full or in part under Title IV-C of the Higher Education Act of 1965, as amended) during the regular school year (i.e. work study).
- Providing more than half of the physical care of a group member under the age of six.
- Providing more than half of the physical care of a group member age six through eleven and the local office has determined adequate child care is not available to:
 - Enable the person to attend class and work at least 20 hours per week.
 - Participate in a state or federally-financed work study program during the regular school year.
- A single parent enrolled full-time in an institution of higher education who cares for a dependent under age 12. This includes a person who does not live with his or her spouse, who has parental control over a child who does not live with his or her natural, adoptive or stepparent.

Id., pp. 3-5.

The person remains in student status while attending classes regularly. *Id.*, p. 5. Student status continues during official school vacations and periods of extended illness. *Id.* Student status does not continue if the student is suspended or does not intend to register for the next school term (excluding summer term). *Id.*

Claimant conceded that his son was not employed. Claimant failed to assert that any other exceptions exist to justify an exception to student status. Accordingly, it is found that DHS properly disqualified Claimant's son from FAP eligibility due to student status. Claimant can again affect his future FAP eligibility by reporting and/or verifying that his son no longer attends college full-time.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS improperly determined Claimant's FAP eligibility, effective February 2015. It is ordered that DHS perform the following actions:

- (1) redetermine Claimant's FAP eligibility, effective February 2015, subject to the finding that DHS should have factored \$104.90 in medical expenses; and
- (2) supplement Claimant for any FAP benefits improperly not issued.

The actions taken by DHS are **REVERSED**.



Christian Gardocki
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **4/17/2015**

Date Mailed: **4/17/2015**

CG / hw

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:

