

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

IN THE MATTER OF:



Reg. No.: 15-004850
Issue No.: 3008
Case No.: [REDACTED]
Hearing Date: May 12, 2015
County: Kent-District 1 (Franklin)

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on May 12, 2015, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED]. Participants on behalf of the Department of Health and Human Services (Department) included [REDACTED], Family Independence Manager; and [REDACTED] Eligibility Specialist.

ISSUE

Did the Department properly determine the amount of Claimant's Food Assistance Program (FAP) monthly 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. Claimant is an ongoing FAP recipient.
2. In November 2014, Claimant reported that her income from employment decreased.
3. Claimant did not work many hours before her last day of work, [REDACTED], 2014.
4. The Department asserted that verifications, including 30 days of income, were requested from Claimant with a November 13, 2014, due date and Claimant failed to provide the income verification by this date.

5. On December 30, 2014, the Department worker noted that Claimant's employment information was available through The Work Number all along.
6. On December 30, 2014, a Notice of Case Action was issued to Claimant stating FAP benefits were approved for \$ [REDACTED] for December 2014, and \$ [REDACTED] per month effective January 1, 2015.
7. On February 11, 2015, the Department worker determined the FAP monthly allotments were incorrect and sent a ticket for FAP supplements for the months of January 2015 and February 2015.
8. The Department subsequently determined that no FAP supplement should be issued for January 2015 based on when the income change was reported and verified.
9. A portion of Claimant's FAP benefits have been withheld for a recoupment each month since the July 1, 2014, payment.
10. On March 11, 2015, Claimant filed a hearing request contesting the amount of the FAP monthly allotment because no supplement was issued for January 2015 and because of FAP benefits that are being taken for a recoupment each month, which Claimant asserts was already paid back.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, 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 Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

Income decreases that result in a benefit increase must be effective no later than the first allotment issued 10 days after the date the change was reported, provided necessary verification was returned by the due date. Do not process a change for a month earlier than the month the change occurred. A supplement may be necessary in some cases. BEM 505, July 1, 2014, p. 10.

If verification is required or deemed necessary, you must allow the household 10 days from the date the change is reported or the date you request verification to provide

verification. The change must still affect the correct issuance month i.e., the month after the month in which the 10th day after the change is reported. BEM 505, p. 10.

If necessary verification is not returned by the due date, put the case into negative action. If verification is returned late, but before case closure, you must act within 10 days from the date the verification is returned. The increase must affect no later than the first allotment issued 10 days after the date the verification was returned. BEM 505, p. 11.

Claimant credibly testified that she first reported the change with income from employment in November 2014. Claimant also explained that she was not working very many hours before her last day of work on [REDACTED] 2014. This is supported by the Department's assertion that verifications, including 30 days of income, were requested from Claimant with a November 13, 2014, due date. However, the Department asserts that Claimant failed to provide the income verification by the due date. The evidence supports that indicates that Claimant complied with the request for other verifications, such as the copy of the Shelter Verification that appears to have been received by the Department on November 13, 2014.

According to a December 30, 2014, case comment, it appears that there was a prior hearing request, which led to the FAP case being reinstated on December 30, 2014. Further, in the December 30, 2014, case comment, the Department worker noted that Claimant's employment information had been available through The Work Number all along. It appears that this employer expects the Department to obtain needed verifications through this service. For example, on the February 26, 2015, verification Claimant submitted at the hearing, the employer stated that all future requests for verification must be processed by The Work Number.

On December 30, 2014, a Notice of Case Action was issued to Claimant stating FAP benefits were approved for \$ [REDACTED] pre-December 2014, then \$ [REDACTED] per month effective January 1, 2015. It appears that the amounts of the FAP allotment on this notice were subsequently determined to be incorrect. A February 11, 2015, case note indicates the Department worker sent a ticket for FAP supplements to be issued for the months of January 2015 and February 2015.

It is not clear if the prior hearing request led to some confusion about when Claimant reported the income change. The hearing summary, February 27, 2015, case comments, and a March 2, 2015, email to Claimant indicate Claimant reported the income ended on December 19, 2014. While there is a case comment documenting a call to Claimant on December 18, 2014, regarding a hearing request, there is not any case comment for a December 19, 2014, contact with Claimant.

The February 27, 2015, case notes and a March 2, 2015, email to Claimant document that the Department determined that no FAP supplement should be issued for January 2015 based on when the income change was reported and verified. However, it appears that this is based on a change report date of December 19, 2014, and

verification date of December 30, 2014. It is not clear that the Department considered: that the initial report of the income change occurred in November 2014; this employer relies on The Work Number for providing income verification; and the December 30, 2014, case comment from the Department worker noting that the income proof was available on The Work Number all along.

The evidence supports a finding that Claimant timely reported the change in income in November 2014. It appears that this employer expects any needed verification to be obtained through The Work Number. The Department did not utilize The Work Number until December 30, 2014, but the Department worker noted that the income proof was available there all along. This appears to be the basis for the Department worker's determination that a FAP supplement should also be issued for January 2015.

Claimant also contested the portion of the FAP monthly allotment being taken for recoupment. The Department documented a standard recoupment due to client error for an overpayment of FAP from December 1, 2007, through March 31, 2008. The documentation shows that a withheld portion of the monthly FAP benefit went toward payment of this recoupment each month since the July 1, 2014, payment. (See BAM 715 and BAM 725 addressing client error overissuance and collection actions.) Claimant did not contest that there was an overissuance. Rather, Claimant asserted that she already paid this overissuance. However, Claimant failed to provide any documentation establishing that this overissuance was paid off. Further, the submitted Claim Search printout documents that Claimant has had multiple overissuances, some of which have a claim status of closed. Accordingly, there was insufficient evidence to establish that this overissuance, for the FAP overpayment from December 1, 2007, through March 31, 2008, has already been paid. Therefore, the evidence supports the ongoing recoupment for this FAP overissuance.

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 determined Claimant's FAP monthly allotment for January 2015.

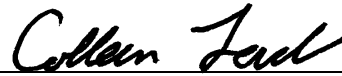
DECISION AND ORDER

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 Claimant's eligibility for FAP for January 2015, in accordance with Department policy.

2. Issue written notice of the determination in accordance with Department policy.
3. Supplement for lost benefits (if any) that Claimant was entitled to receive, if otherwise eligible and qualified in accordance with Department policy.



Colleen Lack
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **5/19/2015**

Date Mailed: **5/19/2015**

CL/jaf

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 copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Hearing Decision from 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:

