

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

IN THE MATTER OF:

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████████████████████

Reg. No.: 15-011203
Issue No.: 3001
Case No.: ██████████
Hearing Date: August 06, 2015
County: Wayne-District 55 (Hamtramck)

ADMINISTRATIVE LAW JUDGE: Zainab Baydoun

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 August 6, 2015, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Health and Human Services (Department) included ██████████, Hearings Facilitator and ██████████, Eligibility Specialist.

ISSUE

Did the Department properly deny Claimant's application for Food Assistance Program (FAP) benefits on the basis that the group's income exceeds the limit?

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 May 11, 2015, Claimant submitted an application for FAP benefits. (Exhibit C)
2. On June 9, 2015, the Department sent Claimant a Notice of Case Action informing him that his application was denied based on excess income. The Notice also informed Claimant that his son, ██████████, is an ineligible student. (Exhibit A)
3. On June 22, 2015, Claimant requested a hearing disputing the Department's actions.

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.

Claimant requested a hearing disputing the Department's denial of his FAP application. At the hearing, the Department testified that Claimant's application was denied because the group's income exceeded the limit for FAP benefits. The Department stated that based on the information provided with the application, Claimant's eligibility for FAP was determined based on a group size of three. The Department concluded that although four people lived in Claimant's home, his group size for FAP purposes was three, as his son was ineligible for FAP benefits based on his status as a student.

A person who is in student status and does not meet the criteria in BEM 245 is a non-group member and is not eligible to receive FAP benefits. BEM 212 (July 2014), p. 9. A person enrolled in a post-secondary education program may be in student status and eligible for FAP assistance, provided that certain eligibility criteria are met. BEM 245 (July 2014), pp.3-5.

Claimant confirmed that his ■ year old son was enrolled as a full time student at a community college. Claimant stated that his son is not employed and that he is not physically or mentally unfit for employment. Claimant confirmed that his son does not participate in an on the job training or in a work study program. There was no evidence presented that Claimant's son provides more than half of the physical care of a group member under the age of six. BEM 245, pp.2-5.

Based on the above information and additional testimony provided at the hearing by both Claimant and the Department, Claimant's son does not meet any of the criteria found in BEM 245; and is therefore not eligible to receive FAP benefits. BEM 245, pp.2-4. Therefore, the Department properly removed Claimant's son from the FAP group and determined that Claimant's FAP group size was three.

At the hearing, the FAP EDG Net Income Results Budget for was reviewed to determine if the Department properly concluded that Claimant's group was ineligible for FAP benefits based on excess income. (Exhibit B).

All countable earned and unearned income available to the client must be considered in determining the Claimant's eligibility for program benefits. BEM 500 (April 2015), pp. 1 – 5. The Department determines a client's eligibility for program benefits based on the client's actual income and/or prospective income. Prospective income is income not yet received but expected. BEM 505 (July 2014), pp. 1-2. In prospecting income, the Department is required to use income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month, discarding any pay if it is unusual and does not reflect the normal, expected pay amounts. BEM 505, p. 5. A standard monthly amount must be determined for each income source used in the budget. BEM 505, p. 7. Income received biweekly is converted to a standard amount by multiplying the average of the biweekly paychecks by the 2.15 multiplier. BEM 505, pp. 7-8.

The Department considers the gross amount of money earned from unemployment benefits and Supplemental Security Income (SSI) in the calculation of unearned income for purposes of FAP budgeting. BEM 503 (July 2014), pp. 31-32. A review of the budget shows that the Department concluded that Claimant had unearned income in the amount of \$1976, which it testified consisted of unemployment benefits of \$724 biweekly and SSI benefits for Claimant's wife in the amount of \$406. (Exhibit B). Although Claimant confirmed that the amounts relied on by the Department were accurate, upon further review and in consideration of the above referenced budgeting policies, the Department did not properly calculate Claimant's unearned income as the total unearned income does not equal \$1976 as determined by the Department.

The deductions to income on the budget were also reviewed. Claimant's wife is a senior/disabled/veteran (SDV) member of the group. BEM 550 (February 2014), pp. 1-2. Groups with one or more SDV members are eligible for the following deductions to income:

- Dependent care expense.
- Excess shelter.
- Court ordered child support and arrearages paid to non-household members.
- Medical expenses for the SDV member(s) that exceed \$35.
- Standard deduction based on group size.
- An earned income deduction equal to 20% of any earned income.

BEM 554 (October 2014), p. 1; BEM 556 (July 2013), p. 3.

In this case, Claimant did not have any earned income and there was no evidence presented that he had any dependent care, child support, or medical expenses over \$35. Therefore, the budget properly did not include any deduction for earned income, dependent care expenses, child support, or medical expenses. Based on the three person eligible group size, the Department properly applied the \$154 standard deduction. RFT 255 (October 2014), p. 1.

The Department considered the \$553 heat and utility standard in calculating Claimant's excess shelter deduction. The Department testified that Claimant did not report any rental expenses on his application and although he did report that he was responsible for property taxes, he did not include an amount. The Department stated that it conducted a property search and determined that because Claimant was not the owner of the property, the amount he pays towards property taxes were not included as housing expenses.

At the hearing, Claimant stated that he does not own the home he lives in. Claimant testified that he pays his landlord \$200 monthly and that his landlord informed him that the \$200 monthly is used to pay the property taxes on the home. The Department did not establish that it sent out a verification checklist in connection with the application and to determine or further clarify Claimant's shelter expenses. Thus, the Department did not establish that it properly calculated Claimant's excess shelter deduction.

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 although the Department properly determined that Claimant's son was an ineligible student, because of the errors in the calculation of unearned income and excess shelter deduction, the Department did not act in accordance with Department policy when it denied Claimant's FAP application based on excess income.

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. Register and process Claimant's May 11, 2015, application for FAP benefits;
2. Issue supplements to Claimant for any FAP benefits the group was entitled to receive but did not from May 11, 2015, ongoing, and
3. Notify Claimant in writing of its decision.



Zainab Baydoun
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **8/10/2015**

Date Mailed: **8/10/2015**

ZB / tlf

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: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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