

**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.: 15-012744
Issue No.: 1001; 3008
Case No.: ██████████
Hearing Date: August 26, 2015
County: Wayne-District 17

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 26, 2015, from Detroit, Michigan. Participants on behalf of Claimant included Claimant and ██████████ ██████████; Claimant's authorized hearing representative (AHR) and translator (Arabic). Participants on behalf of the Department of Health and Human Services (Department) included ██████████, Family Independence Specialist.

ISSUE

Did the Department properly reduce Claimant's Food Assistance Program (FAP) and Family Independence Program (FIP) 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 was an ongoing recipient of FAP and FIP benefits.
2. In a redetermination submitted on May 5, 2015, Claimant reported employment at ██████████ and ██████████ and monthly rent of \$800 (Exhibit A).
3. In a May 13, 2015 redetermination interview, Claimant reported that his job at ██████████ had ended March 29, 2015 and his job at ██████████ started April 17, 2015.
4. On May 13, 2015, the Department sent Claimant a Verification Checklist (VCL) requesting by May 26, 2015, proof of rent, end of employment and 30 days wages. The VCL indicated that loss of employment could be verified by employment records, employer statement, or a verification of employment form, DHS-38 (VOE);

current wages could be verified by the last 30 days' check stubs or earnings statement, an employer statement, or a VOE. (Exhibit I.)

5. A Verification of Employment was centrally printed in Lansing on May 13, 2015, and another was locally printed by the local office on May 13, 2015 (Exhibit H).
6. Before the May 26, 2015 due date of the VCL, Claimant submitted a completed VOE that was addressed to [REDACTED] but completed by [REDACTED]. [REDACTED] indicated that Claimant received the following pay: (i) \$166.25 on April 17, 2015 for 17.5 hours; (ii) \$54.63 on May 8, 2015 for 5.75 hours; and (iii) \$19 on May 15, 2015 for 2 hours. The form indicated that Claimant was paid on a weekly basis at a rate of \$9.50 hours but his weekly hours were unknown and current work was slow. An attached employee payroll document showed that gross earnings to May 19, 2015 totaled \$239.88. (Exhibit C.)
7. The Department budgeted \$239.88 as Claimant's gross monthly earned income from [REDACTED] for May 2015 and \$1031.48 as Claimant's gross monthly earned income from [REDACTED] for May 2015 ongoing (Exhibit D).
8. On May 29, 2015, the Department sent Claimant a Notice of Case Action notifying him that (i) effective July 1, 2015 his monthly FIP allotment was decreasing to \$181 and (ii) he would receive FAP benefits of \$271 for June 2015 and \$436 monthly for July 1, 2015 ongoing (Exhibit E).
9. On June 16, 2015, the Department received a rent receipt verifying that Claimant paid \$800 monthly rent.
10. On June 30, 2015, the Department sent Claimant a Notice of Case Action showing that rent was included in the FAP budget and his FAP benefits had increased to \$543 monthly effective July 1, 2015 (Exhibit F).
11. On July 6, 2015, Claimant filed a request for hearing disputing the reduction of his monthly FIP and FAP benefits (Exhibit 1).

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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of

Human Services) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101-.3131.

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.

The evidence in this case established that in his May 5, 2015 redetermination and the interview that followed Claimant reported that his employment at █████ ended on March 29, 2015 and he began employment at █████ on April 17, 2015 (Exhibit A). In a May 13, 2015 VCL sent to Claimant, the Department requested that Claimant provide verification by May 26, 2015, of, among other things, his end of employment, his wages, and his rent (Exhibit I). Before the due date, Claimant submitted a VOE that was addressed to █████ but was completed and signed by █████ his current employer. The VOE showed that Claimant was currently employed with Job 1 as a temporary employee, with employment beginning April 26, 2015 and the first check issued April 17, 2015. (Exhibit C.)

The Department testified that it never received verification of Claimant's end of employment with █████. Department policy provides that, for FIP and FAP, income that decreases or stops must be verified. BEM 501 (July 2014), p. 9. Claimant testified that he received only a DHS-38 VOE addressed to █████ and, because he assumed that the Department needed verification of his current income, he had █████ complete the VOE he received. The Department testified that it sent two VOEs to Claimant, one for █████, another for █████ on May 13, 2015 with the VCL. The correspondence history from the Department's system showed that two VOEs were sent to Claimant on May 13, 2015; however, one was centrally printed in Lansing and the other was locally printed at the Department's local office (Exhibit 1). Because it follows that only the VOE centrally printed in Lansing was sent with the May 13, 2015 VCL printed in Lansing, the evidence supports Claimant's testimony that he only received one VOE form.

The Department testified that, notwithstanding the lack of verification, based on Claimant's statements it removed Claimant's █████ income from the July FAP and FIP budgets. There was evidence presented that, in response to future requests for verification of end of employment with █████, Claimant notified the Department on July 24, 2015 that █████ was no longer in business in the State of Michigan and he had been unable to obtain any proof of his end of employment from █████. The Department may not deny or terminate assistance because an employer or other source refuses to verify income. BEM 501 (July 2014), p. 9. When neither the client nor the Department is able to obtain verification despite a reasonable effort, the Department must use the best available information, or, if no evidence is available, its best judgment. BAM 130 (July 2015), p. 3. In this case, the best available information indicated that Claimant was no

longer employed with █████ as of March 26, 2015. However, because Claimant reported the end of employment to the Department on May 5, 2015, which was not a timely reported change, and the change was not timely verified, the Department acted in accordance with policy when it continue to budget the █████ income for his June 2015 FAP budget. See BEM 505 (July 2015), p. 10.

In this case, in calculating Claimant's FAP and FIP budgets, the Department testified that used \$1031.48 in gross monthly income from █████

In the VOE it completed, █████ indicated that Claimant had received the following pay: (i) \$166.25 on April 17, 2015 for 17.5 hours; (ii) \$54.63 on May 8, 2015 for 5.75 hours; and (iii) \$19 on May 15, 2015 for 2 hours. The form indicated that Claimant was paid on a weekly basis at a rate of \$9.50 per hour but his weekly hours were unknown and current work was slow. An attached employee payroll document showed that gross earnings to May 19, 2015 totaled \$239.88. In determining Claimant's income from █████, the Department must consider past income and, based on discussions with Claimant, anticipated future benefits.

Although the Department intended to remove Claimant's █████ income and budget his █████ income in determining ongoing eligibility, the worker acknowledged at the hearing that, because she did not realize that the VOE she received was completed by █████ Claimant's current employer, she had improperly relied on the information on Claimant's redetermination in calculating Claimant's gross monthly income from █████ rather than the verification submitted by █████ See BEM 505, p. 9 (requiring verification of earned income at redetermination). For purposes of determining Claimant's eligibility and benefits for FIP and FAP, the Department must prospect Claimant's income. BEM 505, p. 1. In prospecting income based on past income, the Department is required to use income from the past thirty days if it appears to accurately reflect what is expected to be received in the benefit month and should discard any pay that is unusual and does not reflect the normal, expected pay amounts. BEM 505, p. 5. Whenever possible, the Department is required to seek input from the client to establish an estimate. BEM 505, pp. 2-3.

Because the Department did not consider Claimant's income from █████ as reflected in the VOE completed by █████ and discussions with Claimant, in calculating his ongoing FIP and FAP budgets, the Department did not act in accordance with Department policy in calculating his FIP and FAP allotments.

At the hearing, Claimant also expressed concerns that his rent was not budgeted in his June 2015 FAP budget. Shelter expenses must be verified when a change is reported, and if the client fails to verify a reported change in shelter expenses, the Department removes the old expense until the new expense is verified. BEM 554 (October 2014), p. 14. The evidence in this case established that the Department requested verification of Claimant's rent in the May 13, 2015 VCL, which was due by May 26, 2015. Claimant submitted a rent receipt verifying his monthly rent expense to the Department on May 16, 2015. When a verification that results in a FAP benefit increase is returned late, the

increase must affect the month after the verification is returned. BAM 220 (July 2015), p. 7. Because the rent expense was submitted after the VCL due date, it was properly applied to the July 2015 ongoing FAP budget.

Therefore, the Department properly budgeted the rent income to affect July 2015 ongoing FAP benefits but did not act in accordance with Department policy when it calculated Claimant's income for his FIP and FAP.

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 calculated Claimant's FIP benefits for July 2015 ongoing and his FAP benefits for June 2015 ongoing.

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. Recalculate Claimant's FIP budget for July 2015 ongoing and his FAP budget for June 2015 ongoing;
2. Issue supplements to Claimant for any FIP and/or FAP benefits he was eligible to receive but did not from June 2015 ongoing; and
3. Notify Claimant in writing of its decision.



Alice C. Elkin
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **9/4/2015**

Date Mailed: **9/4/2015**

ACE / 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]