

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-013355
Issue No.: 2000, 3008
Case No.: [REDACTED]
Hearing Date: September 10, 2015
County: WAYNE-DISTRICT 55

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 September 10, 2015, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. Participants on behalf of the Department of Health and Human Services (Department) included [REDACTED], FIS.

ISSUE

Did the Department properly calculate the Claimant 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. The Claimant was an ongoing FAP recipient and completed a redetermination for June 2015. The Claimant's FAP group is composed of 3 persons.
2. The Department calculated gross earned income to be \$2201, based upon the information contained in the Notice of Case Action dated [REDACTED]. The Claimant's FAP benefits were reduced to \$88.
3. The following pay stubs were used by the Department to calculate earned income: [REDACTED] (\$1069.25); [REDACTED] (\$1023.75) and [REDACTED] (\$1040).
4. The Department did not accept the Claimant's utility bill for heat and electricity as verification because both the name on the bill and the account number were blacked out.

5. The Claimant also has unearned income from Child support of \$201 and Dependent care expense of \$400. These expenses were confirmed as correct by the Claimant and reference in the Notice of Case Action.
6. The Claimant pays rent of \$550 and received a telephone allowance of \$34, which amounts were included in the FAP budget.
7. At the hearing, the Claimant withdrew her hearing request on the record regarding Medical Assistance, as she no longer wished to proceed on that issue.
8. The Claimant requested a hearing on [REDACTED] protesting 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.

In this case the Claimant requested a hearing to determine if her FAP benefits were correctly calculated after a redetermination for June 2015. The Claimant also requested a hearing regarding Medical Assistance, which she withdrew at the hearing on the record.

A review of the FAP benefits was made at the hearing and the following facts were confirmed. The Claimant pays rent of \$550 and was also given a \$34 telephone allowance. A DTE bill was not properly used by the Department because although it had the Claimant's addresses on the bill, both the name and account number were blacked out. BEM 554 provides:

An expense is allowed if all of the following:

- The service is provided by someone outside of the FAP group.
- Someone in the FAP group has the responsibility to pay for the service in money.

- Verification is provided, if required.

Responsibility to Pay

Responsibility to pay means that the expense is in the name of a person in the FAP group.

If the expense is in someone else's name, allow the expense if the FAP group claims the expense **and** the service address on the bill is where they live. BEM 554 (October 1, 2015) p. 1-2.

Because the Department could not verify the utility bill as presented because the account number was blacked out, the Department properly disallowed using the expense when calculating shelter expenses. The Claimant has recently provided a bill with the account number showing so the bill can be verified.

In calculating FAP earned income the Department must determine the Standard Monthly amount: BEM 505 provides:

A standard monthly amount must be determined for each income source used in the budget.

Stable and Fluctuating Income

Convert stable and fluctuating income that is received more often than monthly to a standard monthly amount. Use one of the following methods:

- Multiply weekly income by 4.3.
- Multiply amounts received every two weeks by 2.15.
- Add amounts received twice a month.

This conversion takes into account fluctuations due to the number of scheduled pays in a month. BEM 505, (July 1, 2015) p. 7-8.

The Claimant has earned income, and is paid biweekly. Based upon the 3 check stubs provided by the Claimant to the Department, the earned income amount as determined by the Department in the amount of \$2201 appears to be incorrect. The Department used 3 check stubs when calculating earned income [REDACTED] (\$1069.25), [REDACTED] (\$1023.75) and [REDACTED] (\$1040). Exhibit 1

A standard monthly amount must be determined for each income source used in the FAP budget.

Stable and Fluctuating Income

Convert stable and fluctuating income that is received more often than monthly to a standard monthly amount. Use one of the following methods:

- Multiply weekly income by 4.3.
- Multiply amounts received every two weeks by 2.15.
- Add amounts received twice a month.

This conversion takes into account fluctuations due to the number of scheduled pays in a month.

In calculating earned income to determine the standard monthly amount, the three pay stubs are added together and then divided by 3 to get the average biweekly pay. The biweekly pay is then multiplied by 2.15. Using this formula, the gross earned income is \$2245. ($\$1069 + \$1023.75 + \$1040 = \$3,132.75 \div 3 = \$1044.25 \times 2.15 = \2245). Thus, based upon the checks provided and the Department's testimony that these checks were used when calculating earned income, the Department did not correctly calculate earned income and thus it could not be determined if the \$88.00 FAP allotment as calculated by the Department is correct. Also, no FAP Net Edge Income Results or Excess Shelter Calculation budget documents were provided by the Department at the hearing so it could not be determined what other calculations were performed by the Department and whether they were correct.

Lastly, at the hearing one of the pay stubs contained 1.5 hours of overtime and was \$24 dollars higher than the average check (\$1069 versus \$1044), and does not appear to be inordinately high or unusual, and the Claimant testified that she only worked overtime no more than one time a month. BEM 505 requires that the Department must discard a pay from the past 30 days if it is unusual and does not reflect the normal, expected pay amounts. Document which pay is being discarded and why. For example, the client worked overtime for one week and it is not expected to recur. Here it appears that the overtime is expected to recur and thus the Department properly included this pay stub in the amount of \$1069. BEM 505, p. 5.

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 calculated the Claimant's FAP benefits because the Department did not demonstrate that the earned income was correctly determined and no FAP budget or shelter allowance calculation was provided, thus it could not be determined whether remaining items such as 20% earned income allowance and excess shelter calculation were determined correctly.

The Claimant's hearing request dated July 14, 2015 regarding Medical Assistance was withdrawn on the record at the hearing and is therefore withdrawn and dismissed.

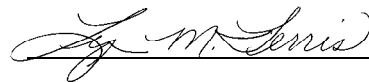
DECISION AND ORDER

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. The Department shall recalculate the Claimant's FAP budget and redetermine the Claimant's FAP allotment.
2. Based upon its determination after recalculation, the Department shall provide the Claimant written notice of its determination and provided a FAP supplement if any is appropriate in accordance with Department policy.
3. The Claimant Hearing request dated [REDACTED] regarding Medical Assistance is withdrawn and DISMISSED. IT IS SO ORDERED.



Lynn M. Ferris
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **9/11/2015**

Date Mailed: **9/11/2015**

LMF / 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 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:

