

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

IN THE MATTER OF:



MAHS Reg. No.: 15-015508
Issue No.: 1001, 3008
Agency Case No.: [REDACTED]
Hearing Date: October 19, 2015
County: WAYNE- P2P

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION

Following Petitioner'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 October 19, 2015, from Detroit, Michigan. The Petitioner was represented by the Claimant. The Department was represented by [REDACTED], FIS, Pathways to Potential.

ISSUE

Did the Department properly close the Claimant's FIP Cash Assistance case?

Did the Department properly calculate the Claimant's Food Assistance (FAP) benefits August 2015?

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 recipient of FIP and FAP benefits and was enrolled in the PATH program.
2. The Claimant started employment on [REDACTED] and provided the Department a timely verification of employment. On [REDACTED], Claimant also provided one pay stub with earnings to date. Exhibits A and B. The Claimant received a pay check of \$232.28 on [REDACTED], which was her first check. Exhibit A
3. The Department issued a Notice of Case Action on [REDACTED], which closed the Claimant's FIP benefits effective [REDACTED] and FAP benefits effective [REDACTED]

██████████ The Department closed the FIP for failure to verify information. The Department closed the FAP benefits for failure to verify information. Exhibit E

4. The Department issued a Notice of Case Action dated ██████████ increasing the Claimant's FAP benefits effective ██████████ and did not include any FIP benefits for September income. Exhibit E, p 4. The Department included \$950 in rent, which was incorrect. The Claimant's rent was \$730 at the time the FAP budget was prepared. The earned income of \$998 was based upon one pay stub provided by Claimant in the amount of \$232.
5. The Department issued a Quick Note on ██████████, advising the Claimant that her FIP closure was correct due to current income. At the hearing, the Department testified that it requested further pay stubs in this Quik Note, which was an incorrect statement. No verification request requesting additional pay stubs was provided to the Claimant. Exhibit F
6. The Department provided a FIP budget for June and July 2015 indicating the Claimant was entitled to \$403 in FIP benefits and included no earned income. Exhibit H. The Department was to provide an eligibility summary as Exhibit H but instead provided budgets for these months.
7. The Department prepared a FIP budget dated ██████████ which included income of \$998 and found the Claimant was not entitled to FIP for August 2014 as her income was \$399 and the Payment standard was \$403. Exhibit G
8. The Department prepared a FAP budget for August 2015 which included \$998 in earned income and \$403 in FIP unearned income. The Claimant's FAP benefits were reduced in August 2015 to \$189. Exhibit G
9. The Claimant requested a timely hearing on ██████████ protesting the Department's closure of her FIP case in August 2015 and reduction of Claimant's FAP benefits in August 2015.

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.

In this case, The Claimant started employment on [REDACTED] and timely provided a pay stub to the Department and a Verification of Employment. Exhibits A and B.

Thereafter the Department closed the Claimant's FIP effective [REDACTED] and even though Claimant did not receive FIP benefits in August due to the Department's closure the Department included earned income and \$403 in FIP benefits (unearned) income when calculating the FAP benefits for August 2015 thereby reducing the FAP benefits. This was error on the Department's part. In addition, the Department closed the FIP case for failure to verify information and did not present any request for verification or verification checklist, thus there was no basis presented as evidence during the hearing that the Claimant failed to verify information. Based upon the following Department policy it is determined that the Department erroneously closed the Claimant's FIP case on [REDACTED] and improperly reduced the Claimant's FAP benefits in August 2015.

Department policy found in BEM 505 addresses when changes due to an increase in income are effective to affect ongoing benefits and to effect case benefit closures.

FIP, SDA, RAP and FAP

For income increases that result in a benefit decrease, action must be taken and notice issued to the client within the Standard of Promptness (FAP - 10 calendar days, FIP/SDA - 15 workdays). **The effective month is the first full month that begins after the negative action effective date.** BEM 505 (July 1, 2015) p.11. (Emphasis supplied)

Thus, based upon BEM 505 the Department was required to act within 10 days for FAP and 15 days for FIP. The effective month for both benefits FIP and FAP changes due to the Claimant starting employment would be September 2015 for the closure of FIP and the adjustment of FAP benefits based upon earned income from Claimant's new job. As the Claimant did not receive FIP for August 2015 due to the improper closure, the Department must supplement the Claimant for August FIP benefits she is entitled to receive. The proper way to have effected the changes resulting from starting employment would be for the Department to have issue notices for both FIP and FAP effective in September 2015. The FAP benefits should not have been reduced until

September and should have only included earned income from Claimant's employment. The FAP benefit calculation for August should have only included the FIP benefit of \$403 as unearned income for August 2015. The FIP benefits should have been closed [REDACTED].

The Department received a timely Verification dated [REDACTED] from the Claimant's employer, which provided that the Claimant was to be paid \$8 per hour and to work 25 hours per week. Exhibit B. This would result in the Claimant receiving \$200 per week. The Department calculated the Claimant's income based upon her first reported pay in the amount of \$232 issued [REDACTED] which was for one week starting pay for 28.5 hours. At the hearing, the Claimant credibly testified that the Department did not discuss the Claimant's work hours prior to budgeting income and did not provide a verification request for additional pays to attempt to determine whether the Claimant was likely to be working consistently 25 hours as reported by the employer. Department policy provides:

A group's benefits for a month are based, in part, on a prospective income determination. A best estimate of income expected to be received by the group during a specific month is determined and used in the budget computation.

Get input from the client whenever possible to establish this best estimate amount. The client's understanding of how income is estimated reinforces reporting requirements and makes the client an active partner in the financial determination process. BEM 505, p. 1

Starting Income

For starting income, use the best available information to prospect income for the benefit month. This may be based on expected work hours times the rate of pay. Or if payments from the new source have been received, use them in the budget for future months if they accurately reflect future income.

For starting self-employment income, determine the **monthly** gross income to budget based on discussion with the client of what he/she expects to receive on average per month. BEM 505 p.7

Based upon the fact that the Department had no discussion with the Claimant regarding her likely number of weekly work hours, this discussion must be completed prior to a new FAP budget being calculated to determine what earnings are likely to be received by the Claimant.

The Department automatically terminated the Claimant's FIP benefits after receiving the verification of employment. The Department closed FIP as of [REDACTED]. This was in error. The Department was required to give the Claimant timely notice, as the

Department was closing the Claimant's FIP case. The Department was required to notify the Claimant 11 days prior to the Negative Action effective date. Here, the Department did not provide timely notice as it closed the Claimant's FIP immediately for failure to verify information.

BAM 220 provides:

A **negative action** is a MDHHS action to deny an application or to reduce, suspend or **terminate a benefit**. This includes an increase in a post-eligibility patient-pay amount for MA or an increase in the client pay for a special living arrangement.

All Programs

Timely notice is given for a **negative action** unless policy specifies adequate notice or no notice. See Adequate Notice and, for CDC and FAP only, Actions Not Requiring Notice, in this item. A timely notice is mailed at least 11 days before the intended negative action takes effect. The action is pended to provide the client a chance to react to the proposed action. BAM 220, p.4.

FIP, RCA, SDA, CDC and MA

Act on a change reported by means other than a tape match within 15 workdays after becoming aware of the change.

FAP Only

Act on a change reported by means other than a tape match within 10 days of becoming aware of the change. BAM 220, p.7

Benefit Decreases: If the reported change will decrease the benefits or make the household ineligible, action must be taken and a notice issued to the client within 10 days of the reported change. BAM 220 p.8

In conclusion, it is determined that the Department must reinstate the Claimant's FIP case for August 2015 and supplement the Claimant for FIP benefits she was entitled to receive for August 2015. As regards the closure date for FIP the Department must issue a new Notice of Case Action effective [REDACTED] closing the Claimant's FIP case.

The Department must also recalculate the Claimant's FAP benefits for August 2015 and may not include any earned income and must supplement the Claimant for FAP benefits she is otherwise entitled to receive for August 2015. The Department also failed to provide any evidence that the \$950 in rent included in the FAP budget was correct and

thus shall include the \$730 in rent the Claimant credibly testified was her rent in August. As regards calculation of September 2015 FAP benefits, the Department must include only earned income, which it has determined after discussion with the Claimant as to anticipated work hours. The Department may not include any FIP income, as FIP will be closed for September 2015.

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 closed the Claimant's FIP case effective [REDACTED] and reduced the Claimant's FAP benefits for August 2015. The Department also failed to satisfy its burden of showing that it acted in accordance with Department policy when it closed the Claimant FIP and FAP benefits for failure to verify information, as no verification request was sent by the Department requesting information.

DECISION AND ORDER

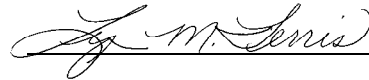
Accordingly, the Department's decision is

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 reinstate the Claimant's FIP case for August 2015 and supplement the Claimant for FIP benefits she was entitled to receive for August 2015 in accordance with Department policy.
2. The Department shall issue a new Notice of Case Action effective [REDACTED] closing the Claimant's FIP case.
3. The Department shall recalculate the Claimant's FAP benefits for August 2015 and may not include earned income; and, must supplement the Claimant for FAP benefits she is otherwise entitled to receive for August 2015. The Department shall use \$730 for the rent amount when calculating FAP benefits.
4. The Department shall recalculate the Claimant's September 2015 FAP benefits, and shall include only earned income. In determining earned income the Department shall attempt to determine, after a discussion with the Claimant, the Claimant's anticipated work hours. In its calculation of FAP benefits for September 2015, the Department may not include any FIP income, as FIP will be closed for

September 2015, and shall include the correct rent amount.



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

Date Signed: **10/20/2015**

Date Mailed: **10/20/2015**

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:

