

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

IN THE MATTER OF:

[REDACTED]

MAHS Reg. No.: 15-012942
Issue No.: 3001
Agency Case No.: [REDACTED]
Hearing Date: November 10, 2015
County: LAPEER

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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. After due notice, telephone hearing was held on November 10, 2015, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] and [REDACTED]. [REDACTED] (Hearing Facilitator) represented the Department of Health and Human Services (Department). Witnesses on behalf of the Department included [REDACTED] (Family Independence Specialist) and [REDACTED] (Regulation Agent).

ISSUE

Did the Department of Health and Human Services (Department) properly close the Claimant's Food Assistance Program (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 Food Assistance Program (FAP) recipient.
2. The Department discovered pictures of the Claimant on the internet with a man (A.L.) that is the putative father of the Claimant's child.
3. The Claimant and A.L. are listed as owners of a vehicle registered with the Michigan Secretary of State as of January 14, 2015.
4. A.L. was employed from August 4, 2013, through February 15, 2015.
5. On May 19, 2015, the Department notified the Claimant that it would close her Food Assistance Program (FAP) benefits as of July 1, 2015, based on net income.

6. On July 10, 2015, the Department received the Claimant's request for a hearing protesting the closure of her Food Assistance Program (FAP) benefits.

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.

All earned and unearned income available to the Claimant is countable. Earned income means income received from another person or organization or from self-employment for duties that were performed for compensation or profit. Unearned income means all income that is not earned, including but not limited to funds received from the Family Independence Program (FIP), State Disability Assistance (SDA), Child Development and Care (CDC), Medicaid (MA), Social Security Benefits (RSDI/SSI), Veterans Administration (VA), Unemployment Compensation Benefits (UCB), Adult Medical Program (AMA), alimony, and child support payments. The amount counted may be more than the client actually receives because the gross amount is used prior to any deductions. Department of Human Services Bridges Eligibility Manual (BEM) 500 (July 1, 2015).

All income is converted to a standard monthly amount. If the client is paid weekly, the Department multiplies the average weekly amount by 4.3. If the client is paid every other week, the Department multiplies the average bi-weekly amount by 2.15. Department of Human Services Bridges Eligibility Manual (BEM) 505 (July 1, 2014), pp 6-7.

FAP group composition is established by determining who lives together, the relationship of the people who live together, whether the people living together purchase and prepare food together or separately, and whether the persons resides in an eligible living situation. Department of Human Services Bridges Eligibility Manual (BEM) 212 (July 1, 2014), p 1.

The Claimant was an ongoing Family Independence Program (FIP) recipient but deferred from the Partnership. Accountability. Training. Hope. (PATH) due to her pregnancy. After giving birth to her child, the Claimant voluntarily withdrew from the FIP

program. After failing to disclose the identity of her child's biological father, the Department initiated a Front End Eligibility (FEE) investigation.

During the Department's investigation into the Claimant's circumstances, the Department discovered internet pictures of the Claimant and a man (████) that was later identified as the father of her child. The Department discovered that █████ and the Claimant are listed as the owners of a vehicle registered with the Michigan Secretary of State as of January 14, 2015. The Department confirmed that █████ was employed and received earned income from August 4, 2013, through February 15, 2015.

The Claimant was receiving FAP benefits as a group of two, including herself and her child, based on no income. The Department alleges that █████ is living with the Claimant and her child, and is therefore a mandatory group member of the Claimant's FAP group. BEM 212. The Department alleges that the Claimant's employment in Colorado ended, but that based on his known income, that he was eligible for the maximum unemployment compensation benefit from Colorado.

The Department added \$████ of employment compensation income to the Claimant's FAP benefit group. The Department determined that the Claimant's group has an adjusted gross income of \$████ by reducing total monthly income by the \$████ standard deduction. The Claimant did not report any housing expenses other than for telephone service, but is not entitled to a shelter deduction because the \$████ standard telephone deduction is less than 50% of her adjusted gross income.

Therefore, the Claimant's net income would be the same as her adjusted gross income. A group of three with a net income of \$████ is not eligible for FAP benefits. Department of Health and Human Services Reference Table Manual (RFT) 250 (October 1, 2015), p 1. On May 19, 2015, the Department notified the Claimant that it would close her FAP benefits as of July 1, 2015, based on their net income.

The Department alleges that █████ was eligible for the maximum weekly unemployment compensation benefit based on his known earned income verified by electronic resources available to the Department. The Department offered substantial evidence that the maximum weekly unemployment benefits issued by the state of Colorado is \$████ per week. Converting a \$████ weekly benefit to a standard monthly amount by multiplying by the 4.3 conversion factor as directed by BEM 505 produces a \$████ monthly income.

This Administrative Law Judge finds that the Department failed to establish that █████ was receiving unemployment compensation benefits, or if he was receiving those benefits that he was receiving a gross monthly income of \$████, which was the figure used to find the group ineligible for FAP benefits.

The Claimant argued that █████ was not living with her. The Claimant testified that she is being supported by her parents and that she has no shelter expenses other than for telephone service. The Claimant concedes that █████ has stayed at her home as a

guest, but denies that he is living with her and her child. The Claimant concedes that [REDACTED] is listed along with her as the owners of an automobile registered with the Michigan Secretary of State, but argued that this arrangement was for financing purposes only because of her lack of credit and employment.

Based on the evidence and testimony available during the hearing, this Administrative Law Judge finds that the Department has offered insufficient evidence to establish that [REDACTED] is living with the Claimant. A LexisNexis report submitted by the Department supports a finding that [REDACTED] has a past connection to Michigan, but also supports a finding that [REDACTED] had an active address in Colorado through May of 2015, when the report was compiled. This Administrative Law Judge find that the automobile registration and Facebook pictures support a finding that there is an ongoing relationship between the Claimant and [REDACTED] but not necessarily that they are living together. As the father of the Claimant's child, living with the group would make him a mandatory group member, but nothing in BEM 212 requires that a short term guest to be considered living with the group.

In the alternative, if [REDACTED] is living with the Claimant, the Department has offered insufficient evidence to establish the gross monthly income that [REDACTED] is receiving. The Department is not alleging that [REDACTED] is employed in Colorado, but that he is receiving the maximum unemployment compensation benefit from Colorado based on his past employment in Colorado, while living in Michigan. Furthermore, the Notice of Case Action issued by the Department on May 19, 2015, is inconsistent with a person receiving the maximum weekly unemployment compensation benefit from Colorado, which would be a lesser amount than the income used to terminate FAP benefits.

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 closed the Claimant's Food Assistance Program (FAP) benefits as of July 1, 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. Allow the Claimant a ten-day period to provide the Department with clarification of the people living at her home.
2. Initiate a determination of the Claimant's eligibility for the Food Assistance Program (FAP) as of July 1, 2015.
3. Provide the Claimant with a Notice of Case Action (DHS-1605) describing the Department's revised eligibility determination.
4. Issue the Claimant any retroactive benefits she may be eligible to receive, if any.



Kevin Scully
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **11/16/2015**

Date Mailed: **11/16/2015**

KS/■

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:

