

1. The Department issued a Notice of Case Action on December 10, 2014 reducing the Claimant's Food Assistance to [REDACTED] Exhibit 9
2. The Department completed the FAP budget for the month of December 2014. In calculating the budget, the Department conceded that the child support months which should have been used were September, October and November 2014. The child support amounts were [REDACTED]

3. The Department did not present any evidence regarding its imposition of a medical deductible for the Claimant and her children.
4. The Claimant requested a timely hearing on January 2, 2015.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), Department of Human Services Reference Tables Manual (RFT), and Department of Human Services Emergency Relief Manual (ERM).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food Stamp Act of 1977, 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 Family Independence Agency) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001 to .3015.

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

Additionally, the first issue in this case involved whether the Department correctly calculated the Claimant's FAP benefits. Many of the calculations for the FAP budget were correct including rent amount, utility allowance, and group size (3). The Department included unearned income for child support of [REDACTED] which was incorrect. BEM 505 requires that the Department use the average of child support for the last three months and may include the current month if all payments for that month were received. BEM 505, (7/1/14) p.3. In this case, the FAP budget was prepared as of December 2014 and it was not clear whether child support income received for December 2014 was available at the time the budget was prepared. The Department did not average the child support for 3 months as required by Department policy, and thus the child support income as calculated by the Department is incorrect. The Department may not have included the [REDACTED] received for September 2014, but there was no explanation why this month (September) was excluded. Averaging the three months of September, October and November, the average child support would be [REDACTED]. Thus, the child support evidence as presented did not establish that the Department complied with policy found in BEM 505 when determining the child support income. As regards child support, the Department is required by DHS policy to discuss with the Claimant

what is a reasonable expectation when child support amounts fluctuate and whether they will continue, the evidence does not support that this was done by the Department and the Claimant credibly testified that she advised her caseworker that her child support income fluctuated.

As regards the remainder of the FAP budget, the Department is required to use the last thirty days to determine income. In this case, it was unclear what income was used to determine earned income. As the budget was prepared in December 2014, the Department should have used November income. November income was not used because the Department asked for December 2014 pay stubs, not November 2014. Further, after reviewing the evidence, it is determined that the Department should have considered prospecting income due to the fact that Claimant's income fluctuated. Department policy requires:

Using Past Income

Use past income to prospect income for the future unless changes are expected:

- Use income from the **past 30 days** if it appears to accurately reflect what is expected to be received in the benefit month.

Note: The 30-day period used can begin up to 30 days before the interview date or the date the information was requested.

Exception: For FAP only, when processing a semi-annual contact, the 30-day period can begin up to 30 days before the day the DHS-1046, Semi-Annual Contact Report, is received by the client or the date a budget is completed. Any 30-day period that best reflects the client's prospective income within these guidelines can be used.

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. BEM 505 p.5

Policy also requires:

- Use income from the **past 60 or 90 days** for fluctuating or irregular income, if:
 - The past 30 days is not a good indicator of future income, and
 - The fluctuations of income during the past 60 or 90 days appear to accurately reflect the income that is expected to be received in the benefit month. BEM 505, p.5-6

Based upon a review of the Claimant's pay information provided to the Department, it is clear that the Claimant's income fluctuates sufficiently to require using income averaged over 60 or 90 days to determine the correct monthly income amount. Policy also requires that any amount which is unusual should be excluded. The Claimant received a pay of [REDACTED] on October 10, 2014, which was unusual and should be dropped when averaging Claimant's earned income if the month of October is included in the average.

Based upon a review of the evidence, the Department did not properly calculate the Claimant's earned income and must re-compute the FAP benefits.

As regards the issue regarding the Claimant's request for a hearing regarding the Change in her Medical Assistance which imposed a deductible effective October 1, 2015, the Department presented no evidence to support its imposition of a deductible. Therefore it is determined that the Department did not meet its burden of proof.

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 the Claimant's Food Assistance for the reasons stated above.

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 failed to present any evidence of how it determined the Claimant's medical deductible.

DECISION AND ORDER

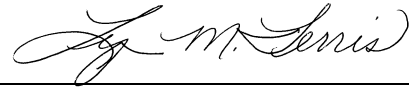
Accordingly, the Department's decision is

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 is ordered to recalculate the Claimant's FAP benefits beginning December 1, 2014 in accordance with this Decision and Department policy requirements regarding the calculation of child support income and earned income.

2. The Department shall recalculate the Claimant's Medical Assistance to determine the proper medical assistance eligibility including a review of MAGI related programs for HMP and Under 19, as well as Group 2 deductible as applicable.



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

Date Signed: **2/19/2015**

Date Mailed: **2/19/2015**

LMF / tm

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 party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (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]
[REDACTED]
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