

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

IN THE MATTER OF:

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Reg. No.: 15-002342
Issue No.: 1000, 3001
Case No.: ██████████
Hearing Date: March 19, 2015
County: WAYNE-DISTRICT 55
(HAMTRAMCK)

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. After due notice, a telephone hearing was held on March 19, 2015, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. Participants on behalf of the Department of Human Services (Department) included ██████████, FIS.

ISSUE

Did the Department properly close the Claimant's Food Assistance (FAP) case?

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

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. At the hearing the Claimant withdrew her hearing request on the record regarding the Department's closure of her FIP case effective March 1, 2015 as she now understood the basis for the closure.
2. The Claimant was an ongoing FAP recipient and completed a redetermination in January 2015 at which time the Department closed the Claimant's FAP case due to excess income.
3. The Claimant's income was fluctuating for January 2015, the redetermination month.

4. The Claimant's FAP group consists of 3 members. The Claimant receives RSDI for her niece in the amount of \$714 but the Department used \$998. The Claimant pays for heat and electric.
5. The Claimant had a redetermination interview with the Department and was asked to provide pay stub information, which she did. The Claimant's paystubs for January 2015 were provided and were \$874.90 and \$668.25. The Department included both pay stubs in determining earned income. The Claimant is paid bi-weekly.
6. The Redetermination requested Claimant provide changes in house rent. The Claimant marked N/A. The Department did not seek verification of rent or pay stubs but handled the request informally.
7. The Department issued a Notice of Case Action dated January 29, 2015 due to the Claimant's income exceeding the net income limit. The FAP case closed effective February 1, 2015. Exhibit 3
8. The Claimant requested a timely hearing on February 10, 2015 protesting the Department's actions.

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 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 Family Independence Agency) 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 to .3131.

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.

Additionally, in this case a redetermination was completed by the Claimant on January 25, 2015. As part of the process the Claimant provided two check stubs for earned income as requested by the Department. The checks were in the amount of \$874.90 and 668.25. Based on these checks and new RSDI income reported, the Department found the Claimant no longer eligible to receive FAP benefits. The first issue which is addressed is whether the Department should have included the large check in the

amount of \$874.90 when calculating the Claimant's FAP benefits. Policy found in BEM 505 provides:

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 (July 2014), p. 5. If income received in 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, the Department must use income from the past 60 or 90 days for fluctuating or irregular income. BEM 505, pp. 5-6. Whenever possible, the Department is required to seek input from the client to establish an estimate. BEM 505, p. 2.

In this case the Department was advised by the Claimant that the amount was inordinately high due to year end payments and vacation and thus was not representative of her normal pay. Given the Department was aware of the high check, it should have excluded the high check and determined whether the last 60 or 90 days was more reflective of income that was to be expected to be received in the benefit month, (January 2015).

Because of the fluctuations in Claimant's biweekly pay, the Department should have considered 60 days of employment income in prospecting her income, particularly when it had this information available at the time it recalculated Claimant's FAP benefits. Furthermore, it should have consulted Claimant concerning her circumstances and discarded the January 2015 check in the amount of \$874.90 because it exceeded her normal pay. The discrepancy of \$714 vs \$998 used in the FAP budget regarding the RSDI amount received by one of the children was not explained. Therefore, the Department did not calculate Claimant's earned income in accordance with Department policy and it is not clear whether the RSDI amount is correct.

At redetermination the Claimant also reported that she was attending community college part-time beginning in February 2015 and no verification at the redetermination was sought to determine when the Claimant began school and whether her work hours and income would be reduced in February 2015, thus qualifying her possibly for FAP as the change would occur within 30 days of the Closure which was February 1, 2015.

Lastly the Claimant credibly testified that she paid heat and electric bills and had rent of \$784. The Department did not have the Claimant's file at the hearing. The Claimant credibly testified that she had provided the Department a copy of her lease one year ago. The Claimant's testimony is unrebutted and thus the Department must, when recalculating the FAP benefits, include the rent that the Claimant pays. The Department argued that the Claimant was required to verify rent as part of the redetermination. This contention is not supported by the redetermination questions which request the

Claimant report Change in Address and Housing Expenses which includes rent. This does not require Claimant to verify her rent unless it changed; the redetermination does not require the lease or other proof be provided unless there is a change in rent. This should have been gone over by the Department at the redetermination. This being the case, it is determined that the Department must include the Claimant's rent when recalculating the FAP benefits and, if necessary, may request by Verification that a new copy of the lease be provided.

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 failed to prospect the Claimant's earned income when calculating FAP benefits and closing the FAP case and should have included rent of \$784 and determined the proper RSDI amount.

Additionally, the Claimant withdrew her Request for Hearing regarding her FIP benefit closure at the hearing on the record.

DECISION AND ORDER

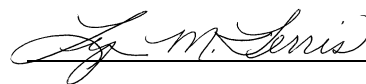
Accordingly, the Department's decision is

AFFIRMED as regards her request for hearing regarding her FIP cash assistance as the Claimant withdrew her request at the hearing.

REVERSED as regards the Department's calculation of Claimant's FAP allotment and closure of the Claimant's FAP case.

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 FAP case and recalculate the FAP benefits to determine the prospected earned income, the correct RSDI unearned income and include Claimant's rent in the housing expense.
2. The Department shall issue a verification checklist to determine earnings and rent verification if necessary and in accordance with Department policy.



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

Date Signed: **3/25/2015**
Date Mailed: **3/25/2015**

