

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-002893
Issue No.: 2000, 3001
Case No.: [REDACTED]
Hearing Date: April 27, 2015
County: Oakland (2)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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, an in-person hearing was held on April 27, 2015 from Madison Heights, Michigan. Participants included the above-named Claimant. [REDACTED] testified and appeared as Claimant's legal counsel. Participants on behalf of the Department of Health and Human Services (DHHS) included [REDACTED], specialist, and [REDACTED] supervisor.

ISSUE

The issue is whether DHHS properly terminated Claimant's Food Assistance Program (FAP) eligibility due to excess income and/or excess assets.

FINDINGS OF FACT

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

1. Claimant was an ongoing FAP benefit recipient.
2. Claimant was a member of seven person household.
3. Claimant's only income came from self-employment.
4. Claimant was the owner of multiple bank accounts, including a savings account.
5. Claimant's lowest savings account balance for November 2014 and December 2014 was \$0.

6. On an unspecified date in 2015, Claimant submitted a 2014 tax return to DHHS.
7. On [REDACTED], DHHS terminated Claimant's FAP eligibility, effective November 2014, in part, based on excess-assets; the termination was also based on and a group size of 7 and excess-income.
8. The DHS determination of excess income did not factor Claimant's self-employment expenses from his tax return.
9. On [REDACTED], Claimant requested a hearing to dispute the termination of FAP benefits and an unspecified dispute of MA benefits.
10. Claimant testified that he has no MA dispute.

CONCLUSIONS OF LAW

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. DHHS (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k. DHHS policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT).

Prior to a substantive analysis, one procedural issue justifies mentioning. At the outset of the hearing, DHHS requested an adjournment to procure the services of an attorney. DHHS testimony explained that such motions are made whenever a client brings an attorney to the hearing. It was not disputed that Claimant's hearing request listed that he was represented by an attorney. During the hearing, DHHS was asked why they did not obtain an attorney before the hearing; DHHS had no explanation. An adjournment is inappropriate if the basis for adjournment could have and should have been resolved before the hearing. Accordingly, the DHHS request for adjournment was denied.

Claimant's hearing request asserted a dispute concerning MA eligibility. Details of the dispute were not noted. Claimant testified that he had no MA dispute and agreed to the dismissal of his hearing request concerning MA benefits. Concerning Claimant's MA eligibility dispute, Claimant's hearing request will be dismissed

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

Claimant requested a hearing to dispute a termination of FAP eligibility, effective November 2014. DHHS asserted that Claimant had excess-income and excess-assets for ongoing FAP eligibility. The analysis will first consider Claimant's asset-eligibility for FAP benefits.

Assets must be considered in determining eligibility for FAP. BEM 400 (October 2014), p. 1. The asset limit is \$5,000 or less. *Id.*, p. 5. For FAP, DHS is to use the lowest checking, savings or money market balance in the month when determining asset eligibility. *Id.*, p. 14.

DHHS presented Claimant's savings account statement (Exhibits 5-9) for the period from September 20, 2014 – December 20, 2014. Claimant's savings statement listed totals of \$27,506.15 in deposits and \$27,650 in withdrawals. During the hearing, Claimant was asked why so much money went through his account. Claimant responded that the deposits came from various contributors to his daughter's wedding. Claimant also explained that such donations were common within the Jewish community.

Claimant's savings statement noted that Claimant overdrew from his account, once in November 2014 and again in December 2014. Thus, presented evidence verified that Claimant was below the asset limit for at least one day in November 2014 and December 2014. Thus, it appears that Claimant was asset-eligible for FAP benefits in November 2014 and December 2014; a finding that Claimant was FAP asset-eligible is premature.

Claimant's savings account withdrawals were not addressed during the hearing. A closer look at the statement indicates that Claimant's withdrawals were actually money transfers to two different checking accounts. Verification of the Claimant's checking accounts was not provided.

Presented evidence justifies finding that DHHS failed to establish that Claimant had excess assets for FAP benefits. Presented evidence cannot determine that Claimant was asset-eligible due to the absence of Claimant's checking account information. DHHS will be ordered to redetermine Claimant's assets, in part, based on Claimant's checking account information.

DHHS also alleged that Claimant had excess-income for FAP eligibility. The only income factored by DHHS was Claimant's self-employment.

The amount of self-employment income before any deductions is called total proceeds. BEM 502 (August 2014), p. 8. Countable income from self-employment equals the total

proceeds minus allowable expenses of producing the income. *Id.* Allowable expenses (except MAGI related MA) are the higher of 25 percent of the total proceeds, or actual expenses if the client chooses to claim and verify the expenses. *Id.*

DHHS testimony stated that Claimant's proceeds were based on his 2014 tax statement. DHHS determined Claimant's monthly proceeds by dividing Claimant's annual proceeds by 12. DHHS determined Claimant's monthly countable income by multiplying Claimant's monthly proceeds by .75. Neither party disputed the method in which DHHS used to determine Claimant's monthly self-employment proceeds. Claimant disputed how DHHS determined Claimant's monthly countable self-employment income.

DHHS did not use Claimant's tax return as verification for Claimant's expenses. DHHS contended that Claimant had to submit receipts to verify self-employment expenses.

Part of the hearing was spent discussing what satisfied DHHS' receipt requirement. Such a discussion is unnecessary because Claimant's tax return could have served as verification.

Under "self-employment income" policy, a tax return is listed as the primary self-employment income verification source. *Id.*, p. 7. Under "self-employment expenses", the only listed verification source is a DHHS-431 with receipts. *Id.*

DHHS interpreted their policy to mean that only receipts can verify self-employment expenses. Such an interpretation of policy is improper.

As noted above, DHHS labels pre-expense self-employment income as "proceeds." DHHS called post-expense self-employment income to be "income." Using these definitions allows specialists to accept a tax return as a verification of a client's self-employment income (i.e. post-expense self-employment income).

It was not disputed that Claimant tax return listed significantly more self-employment expenses than DHHS factored by applying a 25% credit. Accordingly, DHHS will be ordered to redetermine Claimant's self-employment eligibility based on Claimant's 2014 tax return information.

A final dispute concerned Claimant's group size. DHHS factored Claimant's group size to be 7 persons. Claimant alleged that DHHS should have also factored Claimant's son who attends out-of-state Hebrew school. Claimant testimony stated that his son stays in New York for the school year (presumably from September – June) but that he returns for summers.

A person who is temporarily absent from the group is considered living with the group. A person's absence is temporary if all of the following are true:

- The person's location is known.

- The person lived with the group before an absence (newborns are considered to have lived with the group).
- There is a definite plan for return.
- The absence has lasted or is expected to last 30 days or less.

It was not disputed that Claimant's child lived outside of his household for more than 30 days. Thus, Claimant's child is absent from his household. Accordingly, it is found that DHHS properly excluded the child from Claimant's FAP group and properly factored a group size of 7.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that Claimant has no dispute concerning MA eligibility. Claimant's hearing request is **PARTIALLY DISMISSED**.

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHHS properly determined Claimant's FAP group to be 7 persons. The actions taken by DHHS are **PARTIALLY AFFIRMED**.

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHHS improperly terminated Claimant's FAP eligibility. It is ordered that DHHS perform the following actions:

- (1) redetermine Claimant's FAP eligibility, effective November 2014, subject to the following findings:
 - a. DHHS is to use Claimant's 2014 tax return as proof of Claimant's self-employment expenses; and
 - b. DHHS is to determine Claimant's asset-eligibility based on the lowest daily balance total of Claimant's combined assets; and
- (2) initiate a supplement of any FAP benefits improperly not issued.

The actions taken by DHHS are **PARTIALLY REVERSED**.

Christian Gardocki

Christian Gardocki
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **5/8/2015**

Date Mailed: **5/8/2015**

CG / 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:

