

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

**IN THE MATTER OF:**

██████████  
██████████  
██████████

Reg. No.: 15-003604  
Issue No.: 3001  
Case No.: ██████████  
Hearing Date: April 15, 2015  
County: Wayne-District 41 (Fort Wayne)

**ADMINISTRATIVE LAW JUDGE: Alice C. Elkin**

**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; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on April 15, 2015, from Detroit, Michigan. Participants on behalf of Claimant included Claimant and ██████████, Claimant's mother. Participants on behalf of the Department of Health and Human Services (Department) included ██████████, Hearing Coordinator.

**ISSUE**

Did the Department properly close Claimant's Food Assistance Program (FAP) case based on excess net income?

**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 recipient of FAP benefits.
2. In connection with Claimant's redetermination submitted on February 3, 2015, the Department recalculated Claimant's FAP eligibility.
3. Effective February 28, 2015, the Department closed Claimant's FAP case.
4. On March 4, 2015, Claimant filed a request for hearing disputing the Department's actions.

## **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.

Claimant disputed the Department's closure of her FAP case. The Department did not provide the relevant Notice of Case Action concerning the closure of the case. The evidence at the hearing established that, during a redetermination, the Department recalculated Claimant's net income, concluded that her household's net income exceeded the applicable net income limit for FAP eligibility for her group size, and closed her FAP case effective March 1, 2015.

The Department testified that it used the net income limit for a group size of five: Claimant, her husband, and their three children. At the hearing, Claimant testified that she told the Department in January 2015 that her stepson, a minor child, was living in the household but was advised that, because he was on his mother's FAP case, he could not be included in Claimant's FAP group. A minor child is included in the benefit group of the primary caretaker with whom he lives. BEM 212 (July), p. 3. The Department must verify the primary caretaker when questioned or disputed, including when a second caretaker applies for assistance for the same child or when there is a change in the number of days the child sleeps in another caretaker's home and the change is expected to continue, on average, for the next twelve months. BEM 212, p. 5. Verification includes documentation such as court records that address custody or visitation, school records indicating who enrolled the child and who is called in emergency situations, medical records stating where the child lives and who is responsible for the child's medical care, and child care records showing where the child lives and who makes and pays for the child care arrangements. BEM 212, pp 12-13.

While the Department did not assess whether Claimant and her husband were Claimant's stepson's primary caretakers, the Department pointed out that Claimant did not include her stepson as a member of her household in the redetermination she completed on February 3, 2015. Because Claimant did not identify the child as a household member, the Department properly concluded that there were five members in the household at the time of redetermination. Claimant is advised that if the stepson continues to reside in her household, she should request that the Department add him

as a member of the FAP group. She may request a hearing if the request is denied and she disputes the Department's actions.

In order to be eligible for FAP benefits, a FAP group's net income must not exceed the applicable net income limit for FAP eligibility for the group size. BEM 550 (February 2014), p. 1. Based on a group size of five, the net income limit for FAP eligibility is \$2326. RFT 250 (October 2014), p. 1.

The Department presented a FAP net income budget showing the calculation of Claimant's household's income that was reviewed with Claimant. The budget showed gross monthly earned income of \$3590, which the Department testified was the combined income for Claimant and her husband in January 2015. The evidence showed that Claimant received \$550 in gross weekly earned income. Claimant's weekly income, multiplied by 4.3 in accordance with Department policy, results in \$2365 in gross monthly income for Claimant. Claimant's husband is paid biweekly. In January 2015, he received \$398.07 on January 2, 2015; \$373.32 on January 16, 2015; and \$418.69 on January 30, 2015. Claimant's average biweekly pay, multiplied by 2.15 in accordance with Department policy, results in \$852.89 in gross monthly income for Claimant's husband. The sum of Claimant's gross monthly income and her husband's gross monthly income is less than \$3590. Therefore, the Department has failed to satisfy its burden of showing that it acted in accordance with Department policy when it calculated the household's gross income and, consequently, the earned income deduction, which is equal to 20% of the group's earned income. BEM 505 (July 2014), pp. 5-7; BEM 556 (July 2013), pp. 2-3.

The remaining deductions were also reviewed at the hearing. Claimant acknowledged that there were no senior/disabled/veteran (SDV) members in her household. Other than the earned income deduction, households with no SDV members are eligible for a standard deduction, dependent care deduction, child support deduction, and excess shelter deduction. BEM 554 (October 2014), pp. 1; BEM 556 (July 2013), pp. 3-5).

The budget showed a standard deduction of \$192, which is the applicable standard deduction for a five-person FAP group. RFT 255 (October 2014), p. 1. Claimant acknowledged that she had no day care expenses. Therefore, the budget properly showed no dependent care deduction. Although the budget showed no child support deduction, Claimant alleged that her husband paid child support. Clients are allowed child support expenses for court-ordered child support and arrearages paid by the household members to non-household members even for a child who is now a household member (provided that payments are not returned to the household). BEM 554 (October 2014), p. 6. Although the Department indicated that child support was not identified on the redetermination, it acknowledged that the worker should have pulled up the consolidated inquiry based on information it had that Claimant's household had child support obligations. Therefore, the Department did not act in accordance with Department policy when it failed to consider Claimant's household's child support obligations.

The budget also showed that Claimant did not receive an excess shelter deduction. A non-SDV client is eligible for an excess shelter deduction in an amount equal to the sum of the client's monthly shelter expenses and applicable utility standard less 50% of the client's adjusted gross income, up to a \$490 maximum. BEM 556, pp. 4-5; RFT 255, p. 1. In this case, the Department did not provide a copy of the excess shelter deduction budget showing the information used to calculate Claimant's excess shelter deduction but testified that it did not consider any housing expenses or utility standards. Claimant testified that she owned her home and, while she did not have a mortgage payment, she did have monthly utility expenses, annual property taxes, and annual home owner's insurance premiums. The Department testified that Claimant had not identified any changes in her housing expenses in her redetermination but admitted that it was previously aware that Claimant had housing expenses. Therefore, the Department did not act in accordance with Department policy when it failed to consider monthly shelter expenses in calculating Claimant's excess shelter deduction. Also, because Claimant owns her home, she is eligible for the \$553 mandatory heat and utility standard, the most beneficial utility standard available to a FAP client. BEM 554, pp. 15-16; RFT 255, p. 1. Therefore, the Department failed to satisfy its burden of showing that it calculated Claimant's excess shelter deduction in accordance with Department policy.

Because the Department failed to satisfy its burden of showing that it calculated Claimant's household's earned income, and earned income deduction, in accordance with Department policy and the Department failed to consider Claimant's household's child support expenses and shelter and utility expenses, 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 Claimant's FAP application for excess net income.

### **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. Reinstate Claimant's FAP case effective March 1, 2015;
2. Recalculate Claimant's FAP eligibility for March 1, 2015 ongoing;

3. Issue supplements to Claimant for any FAP benefits she was eligible to receive but did not from March 1, 2015, ongoing; and
4. Notify Claimant in writing of its decision.



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**Alice C. Elkin**  
Administrative Law Judge  
for Nick Lyon, Director  
Department of Health and Human Services

Date Signed: **4/17/2015**

Date Mailed: **4/17/2015**

ACE / tlf

**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: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
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