

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

IN THE MATTER OF:

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██████████
████████████████████

Reg. No.: 15-003871
Issue No.: 1001; 2000; 3001; 3008
Case No.: ██████████
Hearing Date: April 20, 2015
County: WAYNE-DISTRICT 55
(HAMTRAMCK)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

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 20, 2015, from Detroit, Michigan. Participants on behalf of Claimant included Claimant/interpreter, ██████████ Claimant's spouse, ██████████. Participants on behalf of the Department of Health and Human Services (Department or DHHS) included ██████████ Refugee Case Specialist; and ██████████, Assistant Payment Worker.

ISSUES

Did the Department properly deny Claimant's Family Independence Program (FIP) effective February 1, 2015, ongoing, due to excess income?

Did the Department properly deny Claimant's Food Assistance Program (FAP) application effective January 6, 2015 to January 31, 2015, due to excess assets?

Did the Department properly calculate Claimant's FAP allotment in the amount of ██████████ effective February 1, 2015?

FINDINGS OF FACT

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

1. On January 6, 2015, Claimant applied for FIP and FAP benefits. See Exhibit 1, p. 1.

2. On January 12, 2015, the Department sent Claimant a Notice of Case Action notifying him that his FIP application was denied effective February 1, 2015, ongoing, due to excess income. See Exhibit 1, pp. 8-12.
3. The Notice of Case Action also notified Claimant that his FAP application was denied effective January 6, 2015 to January 31, 2015, due to excess assets. See Exhibit 1, pp. 8-12. Also, the Notice of Case Action notified Claimant that he was approved FAP benefits effective February 1, 2015 to January 31, 2016 in the amount of [REDACTED]. See Exhibit 1, pp. 8-12.
4. On March 9, 2015, Claimant filed a hearing request, protesting his Cash (FIP), FAP, and Medical Assistance (MA) benefits. See Exhibit 1, p. 2.

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 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 Department of Human Services) 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-.3131.

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.

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 Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

Preliminary matters

First, on March 9, 2015, Claimant filed a hearing request, protesting the denial of his MA benefits. See Exhibit 1, p. 2. Shortly after commencement of the hearing, Claimant

indicated that he is receiving MA coverage and he is no longer disputing the MA benefits. As such, Claimant's MA hearing request is DISMISSED.

Second, Claimant also testified that he is seeking FAP benefits dating back to 2014. Claimant's hearing request acknowledged that he has consistently been denied FAP benefits. See Exhibit 1, p. 2. The evidence indicated that Claimant's last FAP application was dated January 6, 2015. See Exhibit 1, p. 3. Claimant failed to provide any specific evidence of past application denials (i.e., Notice of Case Actions/denial notices). This Administrative Law Judge (ALJ) lacks the jurisdiction to address Claimant's alleged FAP denial(s) from 2014. See BAM 600 (January 2015), pp. 4-6.

Third, this ALJ also received post-hearing correspondence; however, these documents were not admitted into the evidence record. Only the Claimant's business/taxi documents were admitted into the evidence record. See Exhibit A, pp. 1-2.

FIP benefits – excess income

For FIP/SDA, the certified group must be in financial need to receive benefits. BEM 515 (July 2013), p. 1. Need is determined to exist when budgetable income is less than the payment standard established by the department. BEM 515, p. 1. Program, living arrangement, grantee status and certified group size are variables that affect the payment standard. BEM 515, p. 1.

The FIP monthly payment standard for an eligible grantee/group size of five is \$694. See RFT 210 (December 2013), p. 1. The eligibility determination group (EDG) means those persons living together whose information is needed to determine eligibility for assistance. BEM 515, p. 1. The certified group (CG) means those persons in the cash EDG who meet all non-financial eligibility factors. BEM 515, p. 1.

Additionally, the department's income budgeting policies are designed to support financial self-sufficiency by encouraging families to pursue all available means of income. BEM 518 (July 2013), p. 1 and BEM 502 (August 2014), pp. 1-9 (Income from self-employment). Financial need must exist to receive benefits. BEM 518, p. 1. Financial need exists when the certified group passes the Qualifying Deficit Test, Issuance Deficit Test and the Child Support Income Test. BEM 518, p. 1. Financial need exists if: there is at least a \$10 deficit after income is budgeted in the issuance deficit test and the group passes the child support income test. BEM 518, p. 2. If the group fails either test, the group is ineligible for assistance. BEM 518, p. 2.

In this case, the Department testified that Claimant's self-employment income of [REDACTED] (verified with his income tax return) exceeded the FIP income limits. See Exhibit 1, p. 1. The Department, though, failed to present Claimant's tax return to show how it calculated Claimant's self-employment income. Moreover, the Department failed to present a FIP budget to show how Claimant's income exceeded the limits.

In response, Claimant argued that he longer had any form of self-employment income. Claimant testified that he was the owner of his business, a taxi company. However,

Claimant provided evidence that he sold his taxi on December 26, 2014 and he also presented his Certificate of Dissolution for his business signed on January 21, 2015. See Exhibit A, pp. 1-2. Claimant testified that he provided both pages to the Department at the time of application, which the Department denied ever receiving. It should be noted that it would not be possible to provide the Certificate of Dissolution of the business to the Department at the time of application because it is dated January 21, 2015, which was subsequent to the application.

Nonetheless, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it denied Claimant's FIP application effective February 1, 2015. For the reasons stated below, the Department will re-register and reprocess Claimant's FIP application dated January 6, 2015.

First, the Department failed to present Claimant's tax return to show how it calculated Claimant's self-employment income nor did the Department present a FIP budget to show how Claimant's income exceeded the limits. See BAM 600 (April 2015), p. 38 (The ALJ determines the facts based only on evidence introduced at the hearing, draws a conclusion of law, and determines whether DHHS policy was appropriately applied).

Second, Claimant rebutted the Department's argument that he did not have any form of self-employment income. Claimant provided evidence that he sold his taxi on December 26, 2014 and he also presented his Certificate of Dissolution for his business signed on January 21, 2015. See Exhibit A, pp. 1-2.

FAP benefits – excess assets

Assets mean cash, any other personal property and real property. BEM 400 (January 2015), p. 1. The FAP asset limits if \$5,000 or less. BEM 400, p. 5. The Department determines asset eligibility prospectively using the asset group's assets from the benefit month. BEM 400, p. 3. Asset eligibility exists when the group's countable assets are less than, or equal to, the applicable asset limit at least one day during the month being tested. BEM 400, p. 3. An asset must be available to be countable. BEM 400, p. 9. Available means that someone in the asset group has the legal right to use or dispose of the asset. BEM 400, p. 9. The Department assumes an asset is available unless evidence shows it is not available. BEM 400, p. 9.

In this case, the Department denied Claimant's FAP application due to excess assets for the period of January 6, 2015 to January 31, 2015. See Exhibit 1, pp. 8-12. The Department testified that Claimant had assets in the amount of [REDACTED] See Exhibit 1, p. 1. The Department testified that Claimant's assets consisted of bank accounts, real properties and/or rental properties, etc., although the Department failed to provide any documentary evidence on how it calculated Claimant's assets. Claimant argued that his FAP assets were below the [REDACTED] limit. For example, BEM 400 provides specific policies as to how the Department is supposed to calculate Claimant's fair market value of real property. See BEM 400, pp. 29-35. The Department failed to provide any testimony or evidence on how it calculated the fair market value of the real property nor did it present any bank statements showing Claimant's account balances.

Therefore, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it denied Claimant's FAP application. See BAM 600, p. 38 and BEM 400, pp. 1-67. The Department will re-register and reprocess Claimant's FAP application dated January 6, 2015.

FAP allotment

It was not disputed that the certified group size is five and that there are no senior/disabled/disabled veteran (SDV) member(s). The Department presented Claimant's FAP budget for review. See Exhibit 1, pp. 4-5. The budget indicated that Claimant's monthly self-employment income is \$1,542. See Exhibit 1, p. 4. As stated in the FIP analysis, the Department obtained this amount from Claimant's tax return. In response, Claimant argued that he no longer had any form of self-employment income.

Individuals who run their own businesses are self-employed. BEM 502, p. 1. The amount of self-employment income before any deductions is called total proceeds. BEM 502, p. 3. Countable income from self-employment equals the total proceeds minus allowable expenses of producing the income. BEM 502, p. 3. If allowable expenses exceed the total proceeds, the amount of the loss cannot offset any other income except for farm loss amounts. BEM 502, p. 3. Allowable expenses (except are the higher of 25 percent of the total proceeds, or actual expenses if the client chooses to claim and verify the expenses. BEM 502, p. 3. A list of allowable and non-allowable expenses are located in BEM 502, pp. 3-4.

Verification sources for self employment income involve the following:

- The primary source for self employment income is a income tax return provided:
 - The client hasn't started or ended self-employment, or received an increase/decrease in income, etc.
 - The tax return is still representative of future income.
 - The client filed a tax return.
- Secondary source - DHS-431, Self-Employment Statement, with all income receipts to support claimed income.
- Third source - DHS-431, Self-Employment Statement, without receipts. When this verification source is used, a Front End Eligibility (FEE) referral is required. Do not open the case until the FEE investigation is completed.

BEM 502, p. 7 and see also BEM 502 for additional FEE guidance.

Based on the foregoing information and evidence, the Department failed to establish that it properly calculated Claimant's self-employment income. As stated in the previous FIP analysis, the Department failed to present Claimant's tax return to show how it

calculated Claimant's self-employment income. See BAM 600, p. 38. In fact, Claimant provided evidence that his self-employment had ended. See Exhibit A, pp. 1-2. Per policy, Claimant's income tax return would not be the primary source of verification because Claimant's self-employment had ended. See BEM 502, p. 7. For the reasons stated above, the Department will recalculate Claimant's FAP benefits effective February 1, 2015, ongoing. This ALJ will not further discuss the FAP budget as the Department has already failed to establish that it properly calculated Claimant's FAP budget effective February 1, 2015, ongoing.

DECISION AND ORDER

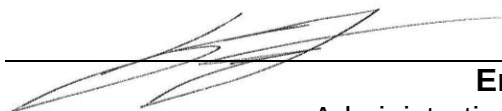
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it (i) denied Claimant's FIP application effective February 1, 2015; (ii) denied Claimant's FAP application effective January 6, 2015 to January 31, 2015; and (iii) improperly calculated Claimant's FAP benefits effective February 1, 2015, ongoing.

Accordingly, the Department's FIP and FAP 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. Initiate re-registration and reprocessing of Claimant's FIP and FAP application dated January 6, 2015;
2. Issue supplements to Claimant for any FAP benefits he was eligible to receive but did not from January 6, 2015 to January 31, 2015;
3. Issue supplements to Claimant for any FIP benefits he was eligible to receive but did not from February 1, 2015, ongoing;
4. Recalculate the FAP budget for February 1, 2015, ongoing;
5. Issue supplements to Claimant for any FAP benefits he was eligible to receive but did not from February 1, 2015, ongoing; and
6. Notify Claimant of its decision.

IT IS ALSO ORDERED that Claimant's MA hearing request is **DISMISSED**.



Eric Feldman
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **4/22/2015**

Date Mailed: **4/22/2015**

EJF/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 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

