

**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.: 15-004778
Issue No.: 6001
Case No.: ██████████
Hearing Date: April 29, 2015
County: WAYNE-DISTRICT 76
(GRATIOT/SEVEN M)

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; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on April 29, 2015, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. Participants on behalf of the Department of Health and Human Services (Department) included ██████████ ██████, Assistance Payments Supervisor, and ██████████ ██████, Assistance Payments Worker.

ISSUE

Did the Department properly close the Claimant's Child Development and Care (CDC) Benefits due excess income?

Did the Department properly close the Claimant's Food Assistance (FAP) case due to excess 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. The Department issued a Notice of Case Action on March 6, 2015 closing the Claimant's CDC case due to gross income exceeding the income limit effective March 22, 2015. Exhibit F

2. The Department issued a Benefit Notice on April 25, 2015 closing the Claimant's FAP case due to exceeding the net income limit of \$2540 closing FAP on April 30, 2015. At the time of the hearing request of March 17, 2015 no action on Claimant's FAP case had yet been taken by the Department.
3. The Department issued a verification checklist dated February 23, 2015 requesting Claimant provide number of hours worked as part of the review of her CDC. Exhibit A.
4. The Claimant received income from child support, unemployment benefits and earned income. The Claimant's earned income and unemployment benefits fluctuated based upon her income. The Department looked at the Claimant's pay history for November 6, 2014 through January 15, 2015.
5. The Claimant's child support is \$425 monthly. Exhibit C.
6. The Claimant received unemployment (under employment). The Claimant receives unemployment biweekly. The Department used the following amounts to calculate the unemployment income: \$164 for January 28, 2015; \$286 for February 14, 2015; and \$136 for March 28, 2015. Exhibit D.
7. The Department received a completed verification checklist dated March 17, 2015. The VCL was received on March 25. from the Claimant's employer for the period November 6, 2014 through March 12, 2015. Exhibit E
8. The Department conducted a case read review of the Claimant's FAP and CDC benefits on March 6, 2015.
9. The Claimant requested a hearing on March 17, 2014 protesting 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.

In this case, the Department closed the Claimant's CDC and FAP case due to excess income.

The Department is required to consider all income from any source, unless excluded when determining CDC income eligibly. BEM 525, (7/1/13) p.1. the benefit month for CDC is the month an assistance benefit payment covers. For CDC, benefit month is the month in which the pay period ends. BEM 505, (July 1, 2015) p. 2

The Department closed the Claimant's CDC when it determined as of March 22, 2015 that the Claimant's income exceeded the gross Income limit. Exhibit F. Although the Claimant also requested a hearing regarding the closure of her FAP case, that issue was not addressed at the present hearing as the FAP case had not closed prior to the Claimant's March 17, 2015 hearing request and thus the Department had taken no action on the FAP case at the time of the Claimant's hearing request. Exhibit G.

The Department issued a Notice of Case Action closing CDC on March 6, 2015 effective March 22, 2015. The Department looked at earned income for the last 30 days which included pay amounts confirmed by the Claimant in the amount of \$658.56 (2/26/15) and \$721.61 (3/12/15). Earned income was based on income for the last 30 days and used two pay stubs verified from the Claimant's employer. The Claimant generally works 20 hours but does receive additional hours when her employer needs coverage and thus her income fluctuates. Exhibit H and Exhibit E. The Budget that was reviewed was for the period March 22, 2015 ongoing. The Budget used amounts different than discussed at the hearing and did not include any unemployment unearned income and the earned income and the child support amounts are incorrect. Exhibit H.

The gross earned income found by the Department was \$1993. This calculation is incorrect. The gross income based upon these checks is \$1483. This is based on adding the checks together and dividing by 2 to get average monthly income, and then multiplying the average by 2.15. $(\$658.56 + \$721.61 = \$1380 \div 2 = \$690 \times 2.15 = \$1483)$ BEM 505 (July 1, 2014) page 7-8.

The Department calculated child support unearned income and used \$353 using child support for January 2015, \$425; February 2015, \$425; and December 2014, \$209.57 which when totaled and divided by 3 to get the average which is \$353 which amount is correct. However the Department used \$392 in the budget. Thus the child support as calculated is incorrect. Exhibit H.

Unemployment benefits include all of the following:

- Unemployment benefits (UB) available through the Michigan Unemployment Insurance Agency (UIA) and comparable agencies in other states.
- Supplemental unemployment benefits (SUB pay) from an employer or other source.
- Trade Readjustment Act (TRA) payments.

Count the gross amount as unearned income.

Sometimes benefits are reduced because the individual has earnings. In such cases, the reduced amount is the gross amount. BEM 503 (July 1, 2014) p.34-35. The unemployment benefits received by the Claimant for the last 30 days was \$136 for pay date March 14, 2015 and \$276 for February 14, 2015.

The income limit for a CDC group of three is \$2,367. RFT 2470, (August 1, 2014) p.1. The budget the Department used to close the Claimant's CDC at the hearing was incorrect and did not demonstrate that the income was corrected. The Budget which closed the Claimant's case is for the period March 22, 2015 through April 4, 2015 and is incorrect and must be recalculated. Exhibit H.

It should also be noted that the Department must also consider BEM 505 regarding temporary ineligibility which for CDC is limited for one month or two pay periods. The case will only close if ineligibility will last beyond month or two CDC pay periods. BAM 505, p. 12.

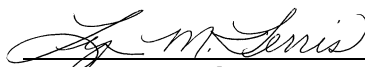
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with Department policy when it closed the Claimant's CDC on March 22, 2015 due to excess income.

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. The Department shall recalculate the Claimant's CDC budget for the 30-day-period prior to the March 22, 2015 closure date and determine whether Claimant is eligible for CDC in accordance with Department policy.



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

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

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

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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

