

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

IN THE MATTER OF:

██████████
██████████
██████████

Reg. No.: 15-009032
Issue No.: 2001; 3001
Case No.: ██████████
Hearing Date: July 08, 2015
County: Macomb-District 20

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 July 8, 2015, from Detroit, Michigan. Participants on behalf of Claimant included Claimant; ██████████, Claimant's wife; and ██████████, Claimant's ██████████ and authorized hearing representative (AHR). Participants on behalf of the Department of Health and Human Services (Department) included ██████████, case manager.

ISSUE

Did the Department properly close Claimant's Food Assistance Program (FAP) and Medical Assistance (MA) cases?

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 and his wife were ongoing recipients of FAP and MA.
2. Claimant and his wife jointly filed taxes and claimed their minor son as a dependent.
3. In connection with a front-end eligibility (FEE) investigation, the Department determined that Claimant's wife had an interest in a ██████████, a restaurant incorporated in the State of Michigan, that had not been timely reported to the Department (Exhibits D and F2).

4. On March 17, 2015, the Department sent Claimant a Notice of Case Action notifying him that his FAP case closed effective March 1, 2015, because the group's income exceeded the net income limit and because Claimant had failed to return verification of lump sum, assets, real property and unusual value property (Exhibit A, pp. 67-70).
5. On March 17, 2015, the Department sent Claimant a Health Care Coverage Determination Notice notifying him that his and his wife's MA cases were closing effective April 1, 2015, because they were not under 21, pregnant, the caretaker of a minor child, blind, disabled, or over age 65 and because they were income-ineligible (Exhibit A, pp. 72-74).
6. On June 9, 2015, Claimant and his wife filed requests for hearing disputing the Department's actions concerning their FAP and MA cases.

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.

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.

Claimant and his wife requested a hearing to dispute the Department's closure of their FAP and MA cases. The March 17, 2015, Notice of Case Action indicated that Claimant's FAP case closed effective March 1, 2015, because the group's income exceeded the net income limit and because Claimant had failed to return verification of lump sum, assets, real property and unusual value property (Exhibit A, pp. 67-70). The March 17, 2015, Health Care Coverage Determination Notice indicated that Claimant's

and his wife's MA cases were closing effective April 1, 2015, because they were not under 21, pregnant, the caretaker of a minor child, blind, disabled, or over age 65 and they were income-ineligible (Exhibit A, pp. 72-74).

At the hearing, the Department explained that the asset at issue in the FAP Notice of Case Action was real property in [REDACTED] but it had concluded that the property was owned by Claimant's and his brother's father and Claimant did not have any ownership right in the property. Because the property is **not** owned by Claimant or anyone in his FAP group, it was not a countable asset for determining Claimant's FAP and MA eligibility. BAM 400 (January 2015), p. 4. Therefore, the Department did not act in accordance with Department policy to the extent it relied on excess assets or failure to verify assets in closing Claimant's FAP case. At the hearing, the Department also testified that Claimant and his wife were the parents of a minor child in the household. Therefore, the Department did not act in accordance with Department policy to the extent it denied MA coverage based on Claimant's and his wife's capacity as parents of a dependent child in their home. BEM 135 (January 2015), p. 1; Michigan Department of Community Health, Modified Adjusted Gross Income (MAGI) Related Eligibility Manual, § 1.2, *available at*: http://www.michigan.gov/documents/mdch/MAGI_Manual_457706_7.pdf.

In determining Claimant and his wife had excess income for FAP and MA eligibility, the Department testified that it relied on Claimant's wife's income from [REDACTED], the [REDACTED] she partially owned, and Claimant's income as an employee of [REDACTED]. Department policy provides that money received from an [REDACTED] is unearned income for MA. BEM 503 (July 2014), p. 29. For FAP purposes, the income a client receives from an [REDACTED] is wages, even if the client is the owner. BEM 501 (July 2014), p. 4.

In this case, the Department acknowledged at the hearing that it erred in calculating Claimant's wife's income from [REDACTED] because it calculated her income from the business based on there being two owners of the business but the tax returns established that there were five co-owners at the time of its calculation, each with a 20% interest in the business (Exhibit B). The evidence at the hearing also established that the Department did not consider the allowable expenses identified on the tax return in calculating the wife's income. It is noted that in their personal tax return, the total income from [REDACTED] is identified as \$2,762 (Exhibit C, p. 30). The Department also acknowledged that it improperly calculated Claimant's income because it budgeted his income as weekly even though he was paid monthly.

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 closed Claimant's FAP case and his and his wife's MA cases.

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 and his wife's MA cases effective April 1, 2015;
2. Reinstate Claimant's FAP case effective March 1, 2015;
3. Recalculate Claimant's FAP and MA eligibility;
4. Issue supplements to Claimant and his wife for any FAP and/or MA benefits they were eligible to receive but did not from March 1, 2015, ongoing; and
5. Notify Claimant in writing of its decision.



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

Date Signed: **7/17/2015**

Date Mailed: **7/17/2015**

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]