

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

IN THE MATTER OF:



Reg. No.: 15-011506
Issue No.: 3008; 2000
Case No.: [REDACTED]
Hearing Date: August 19, 2015
County: WAYNE-DISTRICT 55

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, an in person hearing was held on August 19, 2015, from Hamtramck, Michigan. Participants on behalf of Claimant included the Claimant. Participants on behalf of the Department of Health and Human Services (Department) included [REDACTED], Assistance Payments Worker/Eligibility Specialist.

ISSUE

Did the Department properly calculate the Claimant's FAP benefits?

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 Claimant completed a Semi Annual Contact Report in June 2015 and May income was used to determine the Claimant's FAP benefits. No pay stubs were provided with the Semi Annual report. No pay stubs were provided for June 2015. The Department used information it gathered from the Work Number.
2. The Claimant provided a Semi Annual Contact Report on [REDACTED] with his hearing request and advised the Department that he had no income for June 2015. The Claimant did not receive the Semi Annual when originally sent to him as he was homeless.
3. In calculating the Claimant's FAP benefits, the Department used the May 2015 pays for Semi Annual review based upon the Work Number. These pays were as

follows: [REDACTED] \$326, [REDACTED] 425.73, [REDACTED]; \$328, [REDACTED] \$473, [REDACTED]; \$468.28. Exhibit 3

4. The Claimant paid child support in the amount of \$249 for May 2015 and \$126.66 for June 2015. Exhibit 4
5. At the time of the hearing, the Claimant's FAP case was not closed.
6. At the hearing, the Claimant indicated that he no longer had any dispute regarding his hearing request for Medicaid as he had full coverage.
7. The Claimant requested a hearing on [REDACTED] regarding the amount of his FAP benefits for May and June 2015.

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.

In this case, the Department presented two FAP budgets for May and June 2015, indicating that the Department determined that the Claimant was entitled to \$295 in FAP benefits for May 2015 and June 2015. Exhibits 1 and 2. Based upon the evidence presented, the Department's determination that the Claimant's earned income for both months was \$1373 was in error. The Department testified that it used the Work Number income to calculate the Claimant's FAP benefits. At the time of the hearing, the Department did not establish that it had closed the Claimant's FAP case. Based upon the Work Number pays for May 2015, the Department's determination is not correct nor

did the Department provide any explanation how it determined earned income for May or June 2015 and therefore did not meet its burden of proof that the FAP calculation was correct.

The Claimant completed and turned in a Semi Annual report with his hearing request on [REDACTED]. The Semi Annual report was turned in late. The Semi Annual report advised the Department that the Claimant would receive no income for June 2015. Based upon the Claimant's testimony, it is determined that the Semi Annual report was turned in late, but was turned in. Based upon the Semi Annual report, the Department was on notice that the Claimant had an income decrease for June 2015 as of [REDACTED].

It is also noted that the Claimant's earnings (earned income) based upon the Work Number for April 2015, May 2015, and June 2015 fluctuate rather dramatically and thus the Department, when recalculating Claimant's FAP benefits must take this into consideration. In addition, the pays which are inordinately high in dollar amount for April 2015, in the amount of \$670.51 and May 2015, in the amount of \$468.89 should not be used when re determining earned income as they are inordinately high and not likely to continue based upon the pays received in May and June 2015. Exhibit 3

In prospecting income based on past income, the Department is required to use income from the past thirty days if it appears to accurately reflect what is expected to be received in the benefit month and should discard any pay that is unusual and does not reflect the normal, expected pay amounts. BEM 505 (July 2014), p. 5.

If income received in the past 30 days is not a good indicator of future income, and the fluctuations of income during the past 60 or 90 days appear to accurately reflect the income that is expected to be received in the benefit month, the Department must use income from the past 60 or 90 days for fluctuating or irregular income. BEM 505, pp. 5-6.

Whenever possible, the Department is required to seek input from the client to establish an estimate. BEM 505, p. 2.

Because of the fluctuations in Claimant's weekly pay, the Department should have considered 60 days (or possibly more days) of employment income in prospecting his income, particularly while conducting the Semi Annual which apparently was not conducted as of the hearing date even though the FAP case was remained open. The Department had the Work Number information and should have used this information at the time it calculated Claimant's FAP benefits. Furthermore, it should have consulted Claimant concerning his circumstances and discarded the inordinately high checks for the Claimant.

In addition, the last three months of child support should be discussed with the Claimant (as child support is also fluctuating) so that it can be determined what the most reasonable estimation of child support should be. See BEM 505.

As regards the notice Claimant provided to the Department with the hearing request that the Claimant would receive no income for June 2015 the Department is required to do the following:

Income decreases that result in a benefit increase must be effective no later than the first allotment issued 10 days after the date the change was reported, provided necessary verification was returned by the due date. Do **not** process a change for a month earlier than the month the change occurred. A supplement may be necessary in some cases.

If verification is required or deemed necessary, you must allow the household 10 days from the date the change is reported or the date you request verification to provide verification. The change must still affect the correct issuance month i.e., the month after the month in which the 10th day after the change is reported. BEM 505, p. 10-11.

The Claimant confirmed at the hearing under oath that his earnings for June 2015 as reported by the Work Number was \$123.97 thus the Department must compute a FAP budget for July 2015 as the income is verified as required by department policy.

The Claimant advised, at the hearing, that he no longer required a hearing regarding his Medical Assistance.

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 calculated the Claimant's May and June 2015 FAP benefits. As regards the request for hearing regarding Medical Assistance the Claimant's request for hearing is **DISMISSED**.

DECISION AND ORDER

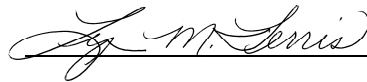
The Claimant's request for hearing regarding Medical Assistance is **DISMISSED**.

Accordingly, the Department's decision regarding FAP benefit calculation 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 FAP benefits for May 2015 and June 2015 and determine, based upon Department policy, the correct FAP benefit amount for those months and ongoing. The Department shall also consider the reduction of Claimant's June 2015 earned income as of the [REDACTED] reporting when calculating the benefits for the month the decreased income must be applied (July 2015) in accordance with Department policy.
2. The Department shall issue a FAP supplement to the Claimant if he is entitled to receive same in accordance with Department policy.
3. The Department shall provide the Claimant written notice of its determination in accordance with Department policy.



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

Date Signed: **9/9/2015**

Date Mailed: **9/9/2015**

LMF / 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:

