

**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.: 15-012441
Issue No.: 1001; 2000; 3001; 5000; 6001
Case No.: ██████████
Hearing Date: August 24, 2015
County: Wayne-District 31

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 August 24, 2015, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Health and Human Services (Department) included █████ █████, Family Independence Manager, and █████ █████, Family Independence Specialist.

ISSUE

Did the Department properly deny Claimant's application for Family Independence Program (FIP) benefits?

Did the Department properly deny Claimant's application for Child Development and Care (CDC) benefits?

Did the Department properly deny Claimant's Food Assistance Program (FAP) application and close her case effective July 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. Claimant has two minor children in her care.
2. On April 30, 2015, Claimant applied for CDC benefits for the two children.
3. On May 29, 2015, Claimant applied for FIP benefits.

4. On June 9, 2015, Claimant submitted a redetermination concerning her Medicaid ongoing eligibility and indicated that she lived on [REDACTED] for 15 days of every 30 with [REDACTED] (EB), the father of one of her children, had employment, and placed her children in daycare (Exhibit C).
5. On June 17, 2015, the Department sent Claimant a Notice of Case Action notifying her that (i) she was denied FIP because her income exceeded the income limit for FIP eligibility, (ii) she was denied CDC because she lacked a need for benefits, and (iii) her FAP case was closing effective July 1, 2015 because verification of her location was not returned (Exhibit A).
6. On June 27, 2015, Claimant reapplied for FAP and CDC (Exhibit B).
7. On July 7, 2015, the Department sent Claimant a Notice of Case Action notifying her that she was denied FAP benefits for July 1, 2015 ongoing, explaining that she was not a member of her FAP group and that her income exceeded the net income limit for FAP eligibility.
8. On July 7, 2015, Claimant submitted a request for hearing disputing the Department's actions concerning FIP, CDC, FAP, Medical Assistance (MA) and State Emergency Relief (SER) benefits.

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).

Claimant requested a hearing concerning FIP, CDC, FAP, MA, and SER. At the hearing, she testified that her MA and SER issues had been resolved and she no longer wished to pursue a hearing concerning those matters. With the Department's agreement, Claimant's July 7, 2015 hearing request concerning MA and SER is dismissed. The hearing proceeded to address Claimant's issues regarding FIP, CDC, and FAP.

FIP Application Denial

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 June 17, 2015 Notice of Case Action denied Claimant's application for FIP on the basis that her household's income exceeded the income limit for FIP eligibility.

In order to receive FIP benefits, a client must establish that financial need exists. BEM 518 (July 2013), p. 1. Financial need is established, in part, when an applicant passes the Qualifying Deficit Test. A client passes the Qualifying Deficit Test if the certified group's budgetable income (after applying the qualifying earned income disregard) for the income month is *less* than the certified group's payment standard for the application month. BEM 515 (July 2013), p. 1; BEM 518, p. 1. At application, the months subject to the qualifying deficit test are the first two application months in which the group could be eligible for an assistance payment. BEM 518, p. 1.

The payment standard is dependent on the FIP group size. Group composition is dependent on which individuals live together. BEM 210 (October 2014), p. 1. Living together means sharing a home where family members usually sleep except for temporary absences. BEM 210, p. 3. A temporarily absent person is considered to be living in the home when all of the following are true: (i) the individuals' location is known, (ii) there is a definite plan to return, (iii) the individual lived with the FIP eligibility determination group before the absence, and (iv) the absence has lasted or is expected to last 30 days or less.

In this case, Claimant testified that she and the two children spent two weeks of each month living with her mother and two weeks of each month living with EB and his mother. Where Claimant and the children lived with EB half of the month and the group reunited each month, the evidence in this case established that EB was, at most, temporarily absent from Claimant's group for half of the month. Therefore, EB and Claimant were living together as defined under Department policy. Because EB was the legal parent of one of Claimant's children and considered living with Claimant, he is a mandatory member of Claimant's FIP group, and Claimant's FIP group had four members: Claimant, her two children, and EB. Therefore, the Department did not act in accordance with policy when it considered Claimant's FIP eligibility based on a group size of three.

The FIP monthly assistance payment standard for a group size of four is \$597. RFT 210 (January 2009), p. 1. Therefore, Claimant is eligible for FIP if her group's budgetable income is less than \$597. Budgetable income for an applicant whose group members have earned income is determined by deducting \$200 from each person's countable earnings, then an additional 20% of each person's remaining earning, as long as the total disregard does not exceed the total countable earnings. BEM 518, p. 5.

In this case, the Department testified that it used \$953 as Claimant's group's total household income based on Claimant's total earned income. However, the Department was unable to explain how it calculated the amount. In fact, the income it referenced as using, \$353 from Claimant's one job and \$435 from her other, which was consistent with what Claimant reported, does not total \$953. Because EB was in Claimant's group, his income would also be included in calculating the group's FIP eligibility. BEM 210, pp. 1-2. However, the Department was unable to explain what, if any, income EB had at the time of Claimant's FIP application.

Because the Department failed to include EB in Claimant's certified FIP group or his income in the group's income eligibility and the Department failed to explain the basis for calculating Claimant's income, the Department did not act in accordance with Department policy when it calculated Claimant's FIP eligibility.

CDC Application

The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, 42 USC 601-619, 670-679c, and 1397-1397m-5; the Child Care and Development Block Grant of 1990, PL 101-508, 42 USC 9858 to 9858q; and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193. The program is implemented by 45 CFR 98.1-99.33. The Department administers the program pursuant to MCL 400.10 and provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001-.5020.

The June 17, 2015 Notice of Case Action notified Claimant that her CDC application was denied for May 17, 2015 ongoing because she lacked a need based on employment, education, or family preservation reasons. In order to be eligible for CDC benefits, each parent/substitute parent must demonstrate a valid need for such benefits. BEM 703 (November 2014), pp. 1, 4. There are four valid CDC need reasons: (i) family preservation, (ii) high school completion; (iii) an approved activity; and (iv) employment. BEM 703, p. 4. CDC payments may be approved for parents who are employed or self-employed and receive money, wages, self-employment profits or sales commissions within six months of the beginning of their employment. BEM 703, p. 4.

In this case, Claimant testified that she identified herself as self-employed when she filed the April 30, 2015 CDC application at issue. When an individual requests CDC for self-employment, a front end eligibility (FEE) referral is required and must be documented in the case record. BEM 703, p. 12. Department policy provides that a case may be opened with zero income with an end authorization date the last day of the pay period that is six months from the employment begin date. BEM 703, p. 11. If self-employment profits are received within the authorization period, the Department is to budget the income and extend the authorization period to coincide with the redetermination date. BEM 703, pp. 11-12. It is unclear from the evidence presented whether EB was a member of Claimant's household at the time of the April 30, 2015 CDC application; however, there was evidence that he also identified a need based on self-employment.

The Department presented no response to Claimant's testimony that she was self-employed or any evidence to establish how it concluded that Claimant had no need for CDC benefits. Therefore, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it concluded that Claimant and/or EB lacked a valid need for CDC benefits.

At the hearing, the Department testified that Claimant also applied for CDC on June 27, 2015 (Exhibit B). Because the Department did not take any action with respect to this application until July 15, 2015, after Claimant filed her July 7, 2015 request for hearing, this

Hearing Decision does not address the June 27, 2015 application. Claimant is advised that she may request a hearing concerning that application in accordance with policy.

FAP Benefits

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 evidence in this case establishes that Claimant's FAP case was scheduled to close on July 1, 2015 because the Department had not been able to locate Claimant (See Exhibit A). On June 27, 2015, before her case closed, Claimant reapplied for FAP benefits (Exhibit B). On July 7, 2015, the Department sent Claimant a Notice of Case Action advising her that her FAP application was denied because her net income exceeded the net income limit applicable to her FAP group and because a group member was no longer living in the home and his/her needs were not considered in determining eligibility.

The June 27, 2015 application indicated that FAP was sought for Claimant, EB and the two minor children. The Department failed to present any evidence to show why any of the identified individuals were excluded from the FAP group. Under the evidence presented, the FAP group consisted of Claimant, EB, and the two minor children. 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 (July 2015), p. 1. Based on a group size of four, the net income limit for FAP eligibility is \$1988. RFT 250 (October 2014), p. 1.

The FAP budget on the July 7, 2015 Notice of Case Action showing the information used to calculate Claimant's household's FAP eligibility was reviewed. The FAP budget showed a monthly income limit of \$1311, which is the net income limit for a group size of two. RFT 250, p. 1. It also showed the \$154 standard deduction for a two-person FAP group was applied to Claimant's budget rather than the \$164 standard deduction for a four-person FAP group. RFT 255 (October 2014), p. 1. Because Claimant's FAP group had four members, the Department did not act in accordance with Department policy when it applied the standard deduction and FAP net income limit for a two-person FAP household.

The budget showed that the Department considered earned income of \$1213 and self-employment income of \$1101. Claimant reported in her application that she earned gross monthly self-employment from two sources totaling of \$703 and EB had gross monthly self-employment income of \$450 (Exhibit B, p. 18), and the Department was not able to explain the basis for the income it used in the FAP budget. Furthermore, to determine a client's countable income from self-employment, the Department must

deduct the allowable expenses of producing the income from the total proceeds. BEM 502 (July 2015), p. 3. Allowable expenses are the higher of (i) 25 percent of the total proceeds, or (ii) actual expenses, if the client chooses to claim and verify the expenses, up to the amount of the total proceeds. BEM 502, p. 3. The Department failed to establish that it considered allowable expenses in calculating Claimant's and EB's self-employment income.

There were no current housing expenses identified on the FAP application (Exhibit B, p. 15). Therefore, the Department properly considered \$0 for monthly shelter expenses. However, there were child support expenses and child support income that the Department failed to consider in calculating Claimant's net income. See BEM 554 (October 2014), p. 1; BEM 503 (July 2015), pp. 6-7; BEM 505 (July 2015), pp. 3-4. By applying the incorrect net income limit and standard deduction and improperly calculating the group's income and child support deductions, the Department did not act in accordance with Department policy in calculating Claimant's FAP budget.

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 denied Claimant's May 29, 2015 FIP application and June 27, 2015 FAP application and failed to satisfy its burden of showing that it acted in accordance with Department policy when it denied Claimant's April 30, 2015 CDC application.

DECISION AND ORDER

Per Claimant's agreement, her July 7, 2015 request for hearing concerning SER and MA is DISMISSED.

The Department's FIP, FAP and CDC decisions are **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. Reregister and reprocess Claimant's May 29, 2015 FIP application;
2. Issue supplements to Claimant for any FIP benefits she was eligible to receive but did not from May 29, 2015 ongoing;
3. Reregister and reprocess Claimant's April 30, 2015 CDC application;
4. Issue supplements to Claimant for any CDC benefits she was eligible to receive but did not from April 30, 2015 ongoing;
5. Reregister and reprocess Claimant's June 27, 2015 FAP application;

6. Issue supplements to Claimant for any FAP benefits she was eligible to receive but did not from July 1, 2015 ongoing; and
7. Notify Claimant in writing of its decisions.



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

Date Signed: **9/3/2015**

Date Mailed: **9/3/2015**

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.

