

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-012717
Issue No.: 3008
Case No.: [REDACTED]
Hearing Date: August 26, 2015
County: WAYNE-DISTRICT 57

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 August 26, 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 [REDACTED], Eligibility Specialist and [REDACTED] FIM.

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 was an ongoing FAP recipient and completed a redetermination in March 2015.
2. A review of the FAP benefits for April, May and June 2015 did not include the Claimant's rent in the amount of \$950. The Department conceded this was incorrect but could not correct the budgets in the Bridges system.
3. The Department issued a notice of Case Action dated [REDACTED], which reduced the Claimant FAP benefits to \$95. Exhibit 1. The Department included unearned income of \$2199 from SSI payments received by 3 group members and an additional \$42 in quarter supplement. Totaling \$2241. In addition, the Department

included \$1101 for child support payments the total unearned income determined by the Department was \$3342. This was incorrect. Exhibit 1

4. The Department used 90 days of child support to determine unearned income received for one of the Claimant's children, based upon the amounts shown in the child support consolidated inquiry; January (\$356.58), February 2015 (\$1815.93) and March 2015 (\$386.58). Exhibit 2
5. The Claimant provided child support received on her case in the following amounts, [REDACTED] (\$64.43 each week, totaling \$193.29). February payments totaled \$605.31 and March 2015 totaled \$128.87. Claimant Exhibit A
6. The Claimant requested a hearing on [REDACTED], 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 changed the Claimant's FAP benefits after the completion of a redetermination by Claimant in March 2015. The Department did not include rent for the Claimant for April, May and June 2015 when computing Claimant's FAP benefits and conceded at the hearing that it should have included the rent. Based upon this error these budgets must be recalculated to include rent.

The Department calculated child support based upon a consolidated inquiry 3 month average which totaled \$2589. Department policy found in BEM 505 requires the Department to average the child support over a 90 day period. The average totaled \$863 but the Department used \$1101, thus for the months of April through August the child support income included is incorrect. At the hearing, the Department's position was that it must use the consolidated inquiry amounts. A review of BEM 505 does not specifically state that the consolidated inquiry must be used, although it is traditionally used by the Department when calculating child support. In addition, the Claimant

presented entirely different child support numbers than the Department's based upon Friend of the Court print outs of what it received, which also matched what the Claimant received as a deposit to her account. Claimant Exhibit A. The payment totals differed significantly, as the Claimant reported and verified receiving three payments of \$64.43 for January, 2015, which totaled \$193. For February the Claimant received \$605 and March \$128.87. These payments averaged \$308.66.

BEM 505 provides the following:

Past Three Months

- Use the average of child support payments received in the **past three calendar months**, unless changes are expected. Include the current month if all payments expected for the month have been received. Do **not** include amounts that are unusual and not expected to continue.

If payments for the past three months vary, discuss the payment pattern from the past with the client. Clarify whether the pattern is expected to continue, or if there are known changes. If the irregular pattern is expected to continue, then use the average of these three months. If there are known changes that will affect the amount of the payments for the future, then do **not** use the past three months to project. **Document the discussion with the client and how you decided on the amount to budget.** BEM 505 (July 1, 2015) p. 3-4.

Based upon math alone, the Department's child support calculation is incorrect. In addition, the Department should not have included the February \$1815 payment based upon the above policy as it is unusually high. It is also noted that if it was a tax intercept payment it should not be included. In addition, the Department did not discuss the child support amounts until after the FAP budget or redetermination was completed. Department Policy clearly anticipates that a discussion be held when child support payments fluctuate. In addition, the Department presented no evidence to rebut the evidence provided by the Claimant at the hearing to demonstrate that her child support payments were significantly less than what was calculated by the Department. The Claimant's information even included an inordinately high check for February 2015, which after discussion with the Department might have required exclusion. The Department attempted to seek assistance of the Office of Child Support (which did not respond to its request for assistance). The Claimant also credibly testified that the Court Ordered Child Support amount is \$208 monthly.

Based upon the child support information provided by the Claimant, it is determined that the Department must use the amounts she demonstrated that she actually received.

After discussion with the Claimant, the Department is to determine if February 2015 should be excluded as a high payment based upon whether it is anticipated that the payments this high will continue. The Department should refer to the numerous examples found in BEM 505 in making its determination.

- Consolidated Inquiry.
- Letter or document from person/agency making payment.
- Check stub.
- **Data obtained from the Michigan child support enforcement system (MiCSES). (Select other acceptable).**
- Contact with child support specialist. (Select other acceptable).
- **Information from the friend of the court (DHS-243, Verification of Public Records). BEM 503, (July 1, 2015) p. 40.**

Thus, based upon the significant child support discrepancy presented, it is determined that the Department should have verified the actual amount received if it believed the Friend of the Court information presented by the Claimant was insufficient.

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 failed to include the Claimant's known rent of \$950 and must adjust the child support amount based upon BEM 505 and BEM 503. In addition, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it used the consolidated inquiry amount even though it was presented with discrepancy, included a very high monthly amount and failed to discuss the matter with the Claimant at redetermination.

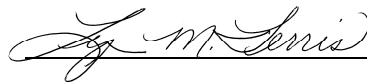
DECISION AND ORDER

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 FAP benefits for the months of April, May, June, July and August 2015 and include the Claimant's rent of \$950 for April, May and June.
2. The Department must redetermine the Claimant's child support based upon the information provided by the Claimant at the hearing (Claimant Exhibit A) in accordance with this Decision and Department policy.
3. The Department shall issue a FAP supplement to the Claimant if any is due, for the months of April 2015 through August, 2015 in accordance with Department policy.



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

Date Signed: **9/2/2015**

Date Mailed: **9/2/2015**

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:

