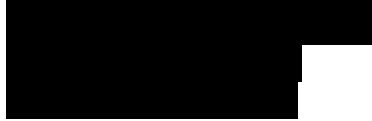


**STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**IN THE MATTER OF:**



Reg. No.: 15-014604  
Issue No.: 3001, 2001  
Case No.: [REDACTED]  
Hearing Date: September 30, 2015  
County: WAYNE- P2P

**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 three way hearing was held on September 30, 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], Success Coach, Pathways to Potential.

**ISSUE**

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

Did the Department properly close the Claimant's Medical Assistance (MA)?

**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 recipient of FAP benefits.
2. After a redetermination, which was completed on [REDACTED], the Department reduced the Claimant's FAP benefits due to changes in unearned income and Claimant's son's earned income, who was 18 and working.
3. The Claimant received a tax intercept payment from Friend of the Court in the in May 2014. Exhibit 2

4. The Department, in determining unearned income for child support, used the last three months of child support and included the May tax intercept payment when averaging the child support.
5. The Claimant also receives \$600 cash monthly from the father of her child.
6. The Claimant pays \$400 in rent and pays for heat. The Department used the correct rent and gave the Claimant a utility allowance of \$553.
7. The Department did not present a FAP budget or excess shelter calculation at the hearing. The Department did not present the gross income amount, which would have included earned income from the son's income and unearned income from child support.
8. The Department found the Claimant eligible for full coverage Medical Assistance by a Health Care Coverage Determination Notice, which found Claimant eligible as of [REDACTED]. Exhibit 1
9. 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.

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 Claimant sought a review of her FAP benefit allotment after the redetermination was completed. Because no FAP budgets were presented and no excess shelter calculation was presented, it could not be determined what total child support and earned income the Department used in calculating the Claimant's FAP benefit. Based upon the evidence provided, the Department did not meet its burden of proof to demonstrate that it followed Department policy when in calculated the FAP benefits.

The Department did indicate that when calculating child support the child support payments were averaged using the last three months of payments received for Claimant's 4 children for the months of April, May and June 2015. The Department included for one child, [REDACTED], two tax intercept payment in May 2015 in the amount of \$2,010.05 and \$3060.72; these payments totaled \$5070.77 (Exhibit 2). At the hearing, a different amount was provided by the Department (\$5,264.57) and the Department testified there was only one tax intercept payment received. The total of \$5264.57 also included a monthly payment for June 2015. Exhibit 2 was received after the conclusion of the hearing. The inclusion of these two tax intercepts in large amounts in the child support averaging was incorrect, and an error, as indicated in the Guidance given in Example 1 referenced below

***BEM 505 provides: 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.

**Note:** The three month period used can begin up to three months before the interview date or the date the information was requested.

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.**

**Example 1:** Janice applied for FAP on August 12. In discussion with Janice, you agree that the last 3 months payments are a reasonable estimate of future child support income,

with one exception - one payment in June was unusually large. Janice confirms that this payment was a tax intercept payment, and is not expected to recur. You use child support payments for May, June and July, excluding the large June payment. BEM 505, (July 1, 2015) p. 3-4 (Emphasis supplied).

Reviewing the other child support received, it appears the Department should have discussed what the Claimant was likely to receive for [REDACTED], as their child support payments fluctuate dramatically. The Department was required, by Department policy cited above, to specifically discuss the payment fluctuations and variation with the Claimant before determining child support and to document the discussion. This did not occur.

In addition, the Department included a [REDACTED] pay stub from the Claimant's son's employment, which was \$200 dollars higher than the other pay stubs presented. Thus, the Department should also not have included the pay for \$397.50 when determining earned income. See BEM 505, which provides for determining income for current and future months:

Prospect income using a best estimate of income expected to be received during the month (or already received). Seek input from the client to establish an estimate, whenever possible.

To prospect income, you will need to know:

- The type of income and the frequency it is received (such as, weekly).
- The day(s) of the week paid.
- The date(s) paid.
- The gross income amount received or expected to be received on each pay date.

### **Case Management Tip**

Prospective budgeting requires knowledge of an individual's current, past and anticipated future circumstances. Asking the client questions, such as those that follow, will help establish the best estimate of future income. BEM 505, p. 2-3.

For starting income, use the best available information to prospect income for the benefit month. This may be based

on expected work hours times the rate of pay. Or if payments from the new source have been received, use them in the budget for future months if they accurately reflect future income. BEM 505, p. 7

The Department, based upon the evidence presented, must also recalculate the earned income in accordance with the policy referenced above in BEM 505 and not include a check which is high (specifically the May 29, 2015 check for \$397.50).

The Claimant also sought a hearing regarding closure of her Medical Assistance case, which the Department indicated was approved as of [REDACTED] (Exhibit 1). Given the Claimant has Medical Assistance there is nothing further to be determined regarding that issue. Exhibit 1

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 calculating child support income; and failed to demonstrate that it properly calculated the earned and unearned income, thus it could not be determined whether the total FAP group income was correct for both earned and unearned. The Department also erred when it included the tax intercept payments received by Claimant for child support when averaging child support.

### **DECISION AND ORDER**

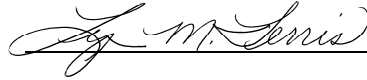
Accordingly, the Department's decision is

**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 September 2015 and recalculate the child support income and earned income in accordance with Department policy in BEM 505.
2. The Department shall issue a FAP supplement to the Claimant, if any is due to the Claimant, in accordance with Department policy.
3. The Claimant's hearing request regarding closure of her Medical Assistance is **DISMISSED.**

**IT IS SO ORDERED.**



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

Date Signed: **10/1/2015**

Date Mailed: **10/1/2015**

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:

