

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

IN THE MATTER OF:

[REDACTED]

MAHS Reg. No.: 15-019516
Issue No.: 3008
Agency Case No.: [REDACTED]
Hearing Date: December 22, 2015
County: KENT-DISTRICT 2
(SPARTA)

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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 After due notice, telephone hearing was held on December 22, 2015, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED]. [REDACTED] represented the Department of Health and Human Services (Department). Witnesses on behalf of the Department included [REDACTED].

ISSUE

Did the Department of Health and Human Services (Department) properly determine the Claimant's eligibility for Food Assistance Program (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 is an ongoing Food Assistance Program (FAP) recipient as a group of seven.
2. On August 3, 2015, the Department received the Claimant's completed Redetermination (DHS-1010) along with copies of some paycheck stubs.
3. The Claimant reported to the Department that a member of her benefit group receives earned income in the gross weekly amount of \$ [REDACTED].

4. The copies of paycheck stubs submitted by the Claimant show that the actual income received was in the gross weekly amount of \$ [REDACTED] on July 2, 2015, \$ [REDACTED] on July 9, 2015, \$ [REDACTED] on July 18, 2015, and \$672.44 on July 23, 2015.
5. The Claimant submitted copies of child support payments made by a member of her household in the amounts of \$ [REDACTED] on August 17, 2015, \$ [REDACTED] on August 14, 2015, \$ [REDACTED] on August 3, 2015, \$ [REDACTED] on July 30, 2015, \$ [REDACTED] on July 30, 2015, \$ [REDACTED] on July 16, 2015, \$ [REDACTED] on July 6, 2015, \$ [REDACTED] on July 2, 2015, \$ [REDACTED] on June 22, 2015, \$ [REDACTED] on June 13, 2015, \$ [REDACTED] on June 13, 2015, \$ [REDACTED] on June 1, 2015, and \$ [REDACTED] on June 1, 2015, \$ [REDACTED] on May 18, 2015, \$ [REDACTED] on May 18, 2015, \$ [REDACTED] on April 27, 2015, \$ [REDACTED] on April 20, 2015, \$ [REDACTED] on April 13, 2015, and \$ [REDACTED] on April 6, 2015.
6. The Department issued a \$ [REDACTED] allotment of Food Assistance Program (FAP) benefits to the Claimant from June 1, 2015, through September 30, 2015.
7. On October 16, 2015, the Department received the Claimant's request for a hearing protesting the amount of her monthly allotment of Food Assistance Program (FAP) 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).

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.

All earned and unearned income available to the Claimant is countable. Earned income means income received from another person or organization or from self-employment for duties that were performed for compensation or profit. Unearned income means all income that is not earned, including but not limited to funds received from the Family Independence Program (FIP), State Disability Assistance (SDA), Child Development and Care (CDC), Medicaid (MA), Social Security Benefits (RSDI/SSI), Veterans Administration (VA), Unemployment Compensation Benefits (UCB), Adult Medical Program (AMA), alimony, and child support payments. The amount counted may be more than the client actually receives because the gross amount is used prior to

any deductions. Department of Human Services Bridges Eligibility Manual (BEM) 500 (July 1, 2015).

All income is converted to a standard monthly amount. If the client is paid weekly, the Department multiplies the average weekly amount by 4.3. If the client is paid every other week, the Department multiplies the average bi-weekly amount by 2.15. Department of Human Services Bridges Eligibility Manual (BEM) 505 (July 1, 2014), pp 7-8.

The Department will use the average of child support payments made over the previous 3 months unless those payments are not expected to continue. BEM 505, pp 3-4.

In this case, the Claimant is an ongoing FAP recipient as a group of seven. The Claimant requested a hearing protesting how the Department is determining her monthly income and monthly expenses when determining her eligibility for FAP benefits.

On August 3, 2015, the Department initiated a routine redetermination of the Claimant's eligibility for FAP benefits based on the completed Redetermination (DHS-1010) form and copies of paycheck stubs she submitted to the Department. The Department determined that a member of the Claimant's household receives earned income in the gross monthly amount of \$ [REDACTED], which was determined by multiplying the average of the four weekly paychecks received in July by the 4.3 conversion factor.

This Administrative Law Judge finds that the Department properly determined the Claimant's countable income.

The Claimant is entitled to a 20% earned income deduction, a \$ [REDACTED] standard deduction, and a deduction for child support payments made. No evidence was presented on the record that anyone in the Claimant's FAP group is considered a senior/disabled/veteran group member.

The Department determined that the Claimant's child support expenses were \$ [REDACTED] for August, \$ [REDACTED] for July, \$ [REDACTED] for June, \$ [REDACTED] for May, and \$ [REDACTED] for April. These monthly totals are supported by the listing of individual payments verified by the Claimant. The Department's representative testified that the Claimant was given credit for the average monthly totals over a three month period as directed by BEM 505.

However, for her June FAP benefits, the Claimant was given a \$ [REDACTED] credit for child support expenses.

This Administrative Law Judge finds that the Department failed to establish that the Department properly determined the Claimant's child support expenses of \$ [REDACTED] in June of 2015 based on the monthly total child support expense determinations.

It should be noted that the Department also gave the Claimant a \$ [REDACTED] child support credit for September of 2015 as well.

Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Michigan Administrative Hearing System (MAHS) will provide an administrative hearing to review the decision and determine the appropriateness. MAHS may grant a hearing for any of the following:

- Denial of an application and/or supplemental payments.
- Reduction in the amount of program benefits or service.
- Suspension or termination of program benefits or service.
- Restrictions under which benefits or services are provided.
- Delay of any action beyond standards of promptness.
- For FAP only, the current level of benefits or denial of expedited service. Department of Human Services Bridges Administrative Manual (BAM) 600 (April 1, 2015), pp 3-4.

A request for hearing must be in writing and signed by the claimant, petitioner, or authorized representative. Rule 400.904(1). Moreover, the Department of Human Services Bridges Administrative Manual (BAM) 600 (April 1, 2015), p. 6, provides in relevant part as follows:

The client or authorized hearing representative has 90 calendar days from the date of the written notice of case action to request a hearing. The request must be received anywhere in DHS within the 90 days.

The Claimant's hearing request was received by the Department on October 16, 2015. This Administrative Law Judge finds that the Claimant has a right to protest her current level of FAP benefits through July 1, 2015.

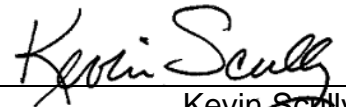
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it applied the Claimant's child support expenses to her eligibility for Food Assistance Program (FAP) benefits.

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. Initiate a determination of the Claimant's eligibility for Food Assistance Program (FAP) benefits as of July 1, 2015.
2. Provide the Claimant with a Notice of Case Action (DHS-1605) describing the Department's revised eligibility determination.
3. Issue the Claimant any retroactive benefits she may be eligible to receive, if any.



Kevin Scully
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **12/30/2015**

Date Mailed: **12/30/2015**

KS ■

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:

