

**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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MAHS Reg. No.: 15-021322
Issue No.: 1000;3008;6002
Agency Case No.: ██████████
Hearing Date: January 28, 2016
County: Wayne-District 49

ADMINISTRATIVE LAW JUDGE: Zainab Baydoun

HEARING DECISION

Following Petitioner'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 January 28, 2016, from Detroit, Michigan. Petitioner appeared for the hearing and represented himself. The Department was represented by ██████████ Hearings Facilitator and Doris R. ██████████, Assistance Payment Supervisor.

ISSUE

Did the Department properly close Petitioner's Family Independence Program (FIP) case; deny his application for Child Development and Care (CDC) benefits; and calculate the amount of his 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. Petitioner was previously a recipient of FIP benefits.
2. On June 24, 2015, the Department sent Petitioner a Notice of Case Action informing him that effective August 1, 2015, his FIP case would be closed on the basis that the group's countable income exceeds the limit for the program. (Exhibit A)
3. Petitioner did not reapply for FIP benefits.
4. The June 24, 2015, Notice further informed Petitioner that he was approved for FAP benefits in the amount of \$16. (Exhibit A)

5. On July 26, 2015, Petitioner submitted an application for CDC benefits.
6. On August 12, 2015, the Department sent Petitioner a Verification Checklist (VCL) instructing him to submit proof of his need for his CDC benefits and proof of his CDC provider assignment to the Department by August 24, 2015. (Exhibit B)
7. On September 4, 2015, the Department sent Petitioner a CDC Provider Verification Form that he was instructed to complete and return to the Department by September 14, 2015. (Exhibit B)
8. The Department did not receive the requested CDC verifications by the due dates.
9. On September 15, 2015, the Department sent Petitioner a Notice of Case Action informing him that his CDC application was denied on the basis that he failed to provide the Department with the requested verifications. (Exhibit C)
10. Petitioner was an ongoing recipient of FAP benefits.
11. Petitioner disputed the amount of his FAP benefits for the months of September 2015 and October 2015.
12. On November 6, 2015, Petitioner requested a hearing disputing the Department's actions with respect to his FIP, CDC and 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).

FIP

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.

A client's request for hearing must be in writing and signed by an adult member of the eligible group, adult child, or authorized hearing representative (AHR). Department of Human Services Bridges Administrative Manual (BAM) 600 (October 2015), p. 2. MAHS may grant a hearing about a 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

or delay of any action beyond the standards of promptness. BAM 600, pp.4-5. Moreover, BAM 600, p. 6 provides that a request for hearing must be received in the Department local office within 90 days of the date of the written notice of case action.

In the present case, Petitioner was an ongoing recipient of FIP benefits. On June 24, 2015, the Department sent Petitioner a Notice of Case Action advising Petitioner of its decision to close his FIP case effective August 1, 2015, on the basis that his income exceeded the limit. (Exhibit A). The Department's Notice of Case Action to Petitioner was dated June 24, 2015, however, Petitioner did not file a request for hearing to contest the Department's action until November 6, 2015. Petitioner confirmed that he did not reapply for FIP benefits after his case closed. Therefore, Petitioner's hearing request with respect to FIP was not timely filed within ninety days of the Notice of Case Action and is, therefore, **DISMISSED** for lack of jurisdiction.

CDC

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.

Additionally, verification is usually required at application/redetermination and for a reported change affecting eligibility or benefit level. BAM 130 (July 2015), p.1. To request verification of information, the Department sends a verification checklist (VCL) which tells the client what verification is required, how to obtain it, and the due date. BAM 130, p. 3. Although the client must obtain the required verification, the Department must assist if a client needs and requests help. If neither the client nor the Department can obtain the verification despite a reasonable effort, the Department is to use the best available information; and if no evidence is available, the Department is to use its best judgment. BAM 130, p. 3.

With respect to CDC cases, clients are given 10 calendar days to provide the verifications requested by the Department. Verifications are considered to be timely if received by the date they are due. BAM 130, pp.6-7. The Department sends a negative action notice when the client indicates a refusal to provide a verification or the time period given has elapsed and the client has not made a reasonable effort to provide it. BAM 130, pp.6- 7. For CDC cases, if the client cannot provide the verification despite a reasonable effort, the Department can extend the time limit at least once. BAM 130, p. 6.

In the present case, the Department testified that Petitioner's CDC application was denied because he did not submit proof of his need for CDC benefits and proof of his CDC provider assignment as instructed in the VCL and related documents. The

Department stated that it received no contact from Petitioner concerning the verifications or his inability to return the verifications timely. At the hearing, Petitioner stated that he received the VCL but could not respond because at the time, his employer had held him back from working and he was unable to obtain employment information. Petitioner confirmed that he did not submit the requested proof of need for CDC benefits or the CDC provider assignment information by the due dates.

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 acted in accordance with Department policy when it denied Claimant's CDC application based on a failure to provide requested verifications

FAP

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, Petitioner requested a hearing disputing the Department's calculation of his FAP benefits. Petitioner stated that he was receiving \$16 and that effective November 1, 2015, his FAP benefits were increased to \$357. Petitioner clarified at the hearing that he was disputing the amount of his FAP benefits for the months of September 2015 and October 2015, as he was not employed during this period, which he stated he timely reported to his worker. The Department stated that Petitioner's FAP benefits were reduced to \$16 effective July 2015 and that the benefits continued at the \$16 amount throughout the time period at issue. The Department stated that Petitioner's FAP budget was unchanged from July 2015 to October 2015.

Although the Department was notified that Petitioner was disputing his FAP benefits for September 2015 and October 2015 and was given an opportunity while off the record to obtain the FAP budgets for this period, the Department returned to the hearing room with the July 2015 FAP EDG Net Income Results Budget, which was reviewed. (Exhibit D).

All countable earned and unearned income available to the client must be considered in determining a client's eligibility for program benefits. BEM 500 (July 2015), pp. 1 – 5. The Department determines a client's eligibility for program benefits based on the client's actual income and/or prospective income. Prospective income is income not yet received but expected. BEM 505 (July 2015), pp. 1-2. In prospecting income, the Department is required to use income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month, discarding any pay if it is unusual and does not reflect the normal, expected pay amounts. BEM 505, p. 5. A standard monthly amount must be determined for each income source used in the

budget. BEM 505, p. 7. Income received weekly is converted to a standard amount by multiplying the average of the weekly pay amounts by the 4.3 multiplier. BEM 505, pp. 7-8. An employee's wages include salaries, tips, commissions, bonuses, severance pay and flexible benefit funds not used to purchase insurance. The Department counts gross wages in the calculation of earned income. BEM 501 (July 2014), pp. 6-7). Additionally, FIP benefits are considered the unearned income of the head of household and the gross amount is included in the calculation of unearned income. BEM 503 (October 2015), pp.14-15.

The Department concluded that Petitioner had earned income in the amount of \$1663 which it testified consisted of his wages from employment. Specifically, the Department testified that it considered Petitioner's weekly pay of: (i) \$130.40 paid on June 15, 2015; (ii) \$373.95 paid on June 22, 2015; (iii) \$472.76 paid on June 29, 2015; and (iv) \$400.00 paid on July 7, 2015. Petitioner disputed the Department's testimony and reliance on his June 2015 income to calculate his September 2015 and October 2015 budgets. Petitioner stated that he was not employed in September 2015 and that he reported the information to his case worker. Petitioner stated that he spoke with his case worker the second week in September 2015 to report that his employment ended and his loss of earnings. Petitioner stated that he went back to work in October 2015 and was paid the second week in October 2015. The Department failed to establish that it properly calculated Petitioner's earned income.

With respect to unearned income, the budget provided by the Department shows \$403 in unearned income which the Department testified consisted of Petitioner's FIP benefit. The Department remained unable to explain however, why it was continuing to budget Petitioner's FIP benefits in the calculation of his FAP benefits for the months of September 2015 and October 2015, if as referenced above, Petitioner's FIP case closed effective August 1, 2015. As such, the Department failed to properly calculate Petitioner's unearned income.

While Petitioner confirmed that did not have a housing or rental expense during the time period at issue, Petitioner stated that he was responsible for heating and utility costs. The Department did not provide an excess shelter deduction budget, thus it was unclear whether the Department properly provided Petitioner with the heat and utility standard deduction in calculating his excess shelter deduction. BEM 554 (October 2015), p. 1, 16-19; BEM 556 (July 2013), p. 3; RFT 255, p.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 based on the errors in the calculation of Petitioner's earned income, unearned income and excess shelter deduction, the Department did not act in accordance with Department policy when it determined that Petitioner was eligible to receive \$16 in FAP benefits for the months of September 2015 and October 2015.

DECISION AND ORDER

Accordingly, Petitioner's hearing request with respect to FIP is **DISMISSED** and the Department's decision is **AFFIRMED IN PART** with respect to CDC and **REVERSED IN PART** with respect to FAP.

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. Recalculate Petitioner's FAP budget for September 2015 and October 2015;
2. Issue FAP supplements to Petitioner for the months of September 2015 and October 2015 in accordance with Department policy; and
3. Notify Petitioner in writing of its decision.



Zainab Baydoun

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

Date Signed: **2/19/2016**

Date Mailed: **2/19/2016**

ZB / 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.

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:

A horizontal bar redacting the entire CC field.