

**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.: 15-021348
Issue No.: 3008
Agency Case No.: [REDACTED]
Hearing Date: January 11, 2016
County: WAYNE-DISTRICT 17
(GREENFIELD/JOY)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 11, 2016, from Detroit, Michigan. The Petitioner was represented by the Petitioner. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearing Facilitator.

ISSUE

Did the Department properly calculate the Petitioners Food Assistance Program (FAP) benefit amount?

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 Petitioner is an ongoing FAP recipient and is currently receiving her FAP benefits in a timely manner and receives \$ [REDACTED] monthly. Exhibit 1.
2. The Petitioner is employed and has earned income. The Department used two paystubs to determine Petitioner's earned income, on which included significant overtime which is not ongoing. The paystubs covered the period from September 15, 2015, through October 14, 2015, and were in the following amounts: \$ [REDACTED] and \$ [REDACTED]. The Department determined total earned income to be \$ [REDACTED].
3. The Petitioner is paid bi-weekly.

4. The Department presented no FAP budget at the hearing and did not provide excess shelter information at the hearing.
5. The Petitioner requested a timely hearing on November 9, 2015, protesting the Department's action and the amount of her 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.

In this case, the Department did not provide sufficient information to allow the undersigned to determine whether it properly calculated the Petitioner's FAP benefit amount. The Petitioner's Hearing Request clearly indicated that the hearing was in part about the amount of her FAP and that payment of FAP benefits was delayed and untimely. The hearing summary provided by the Department contained three sentences: "No Hearing is needed. Customer issue with delayed benefits resolved. Please see attached exhibits." The Petitioner's hearing request stated that her benefits were cut down real low and then continued with a complaint regarding her benefits not being uploaded to her timely and checked the box for amount. At the hearing, the Petitioner stated that she sought a hearing about the amount of her FAP benefits.

The evidence presented by the Department was an eligibility summary that showed FAP benefits were reduced from \$ [REDACTED] to \$ [REDACTED]. Given the lack of evidence presented, the only issue that can be addressed is whether the Department properly calculated the earned income when it used and included a paystub containing significant overtime to determine earned income. Two paystubs were used in the amounts of \$ [REDACTED] and \$ [REDACTED]. The Petitioner credibly testified that the larger check contained significant overtime, which is not ongoing and that she advised her caseworker of these facts.

In this case, the Petitioner is paid bi-weekly. Given the gross discrepancy between the amount of the two paystubs and the Petitioner's credible testimony that she advised her caseworker that she did not regularly receive overtime, the Department should have obtained more paystubs so that the earned income could accurately reflect the regular pay received and should not have included the large overtime check in the amount of

§ [REDACTED] Department policy requires under these circumstances that the Department is required to prospect income and provides:

In reviewing the Department's calculation, the paystubs for a 30-day period were provided. The Department did not provide a Food Assistance Program budget; therefore, it could not be determined if the gross earned income was correct. The Department's response to the hearing request was inadequate and not in compliance with BAM 600 which requires:

- Provide the client and AHR a copy of the DHS-3050, Hearing Summary, and all evidence the department used in making the determination that is in dispute. Complete the DHS-1520, Proof of Service. BAM 600 (October 1, 2015) p. 18.

The hearing summary must include all of the following:

- A clear statement of the case action, in chronological order, including all programs involved in the case action.
- Facts which led to the action.
- Policy which supported the action.
- Correct address of the client and the AHR.
- Description of the documents the local office intends to offer as exhibits at the hearing.

Number the document copies consecutively in the lower right corner; begin numbering with the hearing summary. BAM 600, p. 20

In this case, no such evidence was provided. The Department did not provide a Food Assistance Program Net Edg Income Results, or excess shelter calculations, thus, making it impossible to conduct a hearing to determine if the FAP calculation was correct. The only issue which can be addressed is whether the Department determined the income correctly when it used the large overtime check, which is addressed hereafter.

The Department included a check, which was high when calculating the FAP benefits. The paystub included significant overtime and exceeded the other check by at least \$ [REDACTED] dollars. The Department must discard a check which is unusual and does not reflect the expected pay amounts. Based upon BEM 505, the Department must recalculate the Petitioner's FAP benefits to exclude the pay for \$ [REDACTED] (high) and redetermine the gross income on the additional paystubs as well as discuss with the Petitioner whether the pays are likely to remain stable in the future and determine what is anticipated based upon Petitioner's information regarding her job as required by

Department policy. In this case, the Petitioner credibly testified that she advised the caseworker that the check included income for overtime, which was not continuing. BEM 505 requires:

A group's benefits for a month are based, in part, on a prospective income determination. A best estimate of income expected to be received by the group during a specific month is determined and used in the budget computation.

Get input from the client whenever possible to establish this best estimate amount. The client's understanding of how income is estimated reinforces reporting requirements and makes the client an active partner in the financial determination process. BEM 505 (July 1, 2015) p. 1

Using Past Income

Use past income to prospect income for the future unless changes are expected:

- Use income from the **past 30 days** if it appears to accurately reflect what is expected to be received in the benefit month.

Note: The 30-day period used can begin up to 30 days before the interview date or the date the information was requested.

Exception: For FAP only, when processing a semi-annual contact, the 30-day period can begin up to 30 days before the day the DHS-1046, Semi-Annual Contact Report, is received by the client or the date a budget is completed. Any 30-day period that best reflects the client's prospective income within these guidelines can be used.

Discard a pay from the past 30 days if it is unusual and does not reflect the normal, expected pay amounts. Document which pay is being discarded and why. For example, the client worked overtime for one week and it is not expected to recur. BEM 505 (July 1, 2015) p.5

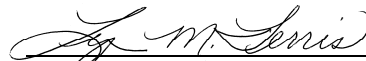
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with Department policy when it calculated the Petitioner's earned income and included a paystub, which included significant overtime and further did not meet its burden of proof to demonstrate the it properly calculated the Petitioner's 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. The Department shall recalculate the Petitioners FAP benefits for the period October 1, 2015, ongoing and redetermine the Petitioner's earned income and all other information necessary to correctly calculate FAP benefits.
2. The Department shall issue a Food Assistance Program supplement to the Petitioner, if Petitioner is otherwise entitled to such supplement, in accordance with Department policy.



Lynn M. Ferris

Administrative Law Judge

for Nick Lyon, Director

Department of Health and Human Services

Date Mailed: **1/11/2016**

LMF/jaf

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:

