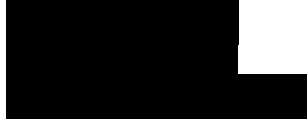


**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

IN THE MATTER OF:



Reg. No.: 15-012439
Issue No.: 3008
Case No.: [REDACTED]
Hearing Date: August 24, 2015
County: WAYNE-DISTRICT 15

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 24, 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.

ISSUE

Did the Department properly calculate the Claimant's Food Assistance (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 after completion of her redetermination, the Department reduced the Claimant's FAP benefits. Exhibit 3
2. The Claimant has earned income and provided pay stubs as part of the redetermination covering May 2015 and June 2015. Exhibit 1, 8 and 10
3. The Claimant's FAP group consists of 4 members, including her minor son who was working at the time of the redetermination. The Claimant's son had a pay of \$505.10 for [REDACTED]. A pay stub for [REDACTED] showed gross pay of \$193.70; and a pay stub for [REDACTED] showed gross pay of \$342.88. Exhibit 2

4. The Claimant also receives unemployment benefits based upon underemployment depending on the work hours assigned to her by her employer.
5. During May 2015, the Claimant did not receive unemployment compensation benefits. In June 2015 the Claimant received unemployment benefits in the amount of \$178 ([REDACTED]) and \$178 ([REDACTED]) for a total of \$356. Exhibit 5
6. The Department issued a Notice of Case Action on [REDACTED], for [REDACTED], reducing the Claimant's FAP benefits to \$99 ongoing. Exhibit 4
7. At the time of the redetermination the Claimant paid rent of \$650, paid for her heating and was eligible for a heating allowance of \$553 for a total shelter expense of \$1203.
8. When Calculating FAP benefits for May 2015 the Department found the earned income to be \$700. The group size was four persons. The FAP benefit was \$549.00 Exhibit 6
9. When calculating the earned income for June 2014, the group gross income was determined to be \$2038. Exhibit 4
10. As part of the redetermination the Claimant provided the Department with 4 pay stubs, [REDACTED]. Exhibit 8 and Exhibit 10. The Department's records indicated that \$442.25 was received on [REDACTED] but the Department gave a different amount during the hearing. See Exhibit 8 and Exhibit 10
11. As part of the redetermination, the Claimant's son provided one pay stub for [REDACTED] (\$505.10) and two pay stubs for January 2015; for [REDACTED] 5 (\$326), and [REDACTED] (\$326). Exhibit 9
12. 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 reduced the Claimant's FAP benefits to \$99 after a redetermination. The Department initially provided no documents other than a hearing summary as part of the hearing packet. Rather than reversing the Department for failure to meet its burden of proof, as the hearing packet was totally unacceptable, the undersigned attempted to resolve the issue by allowing the Department to provide some records. This was also done to accommodate the Claimant, who was entitled to a hearing rather than a straight reversal based upon the Department's failure to meet its burden. The Department was requested to provide information during the hearing and provided some, but not all, of the documents necessary to reach a determination.

The Notice of Case Action issued [REDACTED] was provided, which indicated it determined earned income to be \$2038 and unearned income of \$574 from unemployment was used to determine the FAP benefit amount. No FAP budget was provided to support the benefit amount but the notice indicated that the Claimant was credited with rent of \$650 and Heat and utility allowance of \$553 because she paid for heat. The Notice, which was read into the record, stated that the Claimant's net income exceeded the limit. This makes no sense because if true, the FAP benefit amount would be zero for August 2015, yet the benefits of \$99 were approved ongoing. Exhibit 4. In addition only 1 page of the Notice was received.

Based upon the pay stubs available for the Claimant for May 2015 (one pay stub is inordinately high at \$707.50) and should not have been used until the Claimant's pay history was looked at and a discussion with the Department and the Claimant was conducted as part of the redetermination. A second check in the amount of \$442 was also used. Using the two checks provided the total earned income for June 2015, was \$1149.75 which when divided by 2 = \$574.87 X 2.5 = \$1235.98. This calculation is based upon the formula for determining earned income found in BEM 505 (July 2015), p. 6-7. Looking at Claimant's pay for June the claimant's total differs significantly, [REDACTED] (\$530.70) and [REDACTED] (\$176) totals \$707. This discrepancy was included to note the extreme fluctuation, which apparently the Department ignored.

The Claimant's son provided one pay stub of \$508 and two pays for June 2015. Using the June 2015 pays of \$212.44 and \$399.63 the total gross earned income is \$612 which when divided by 2 = \$306 X 2.15 = \$658. Adding the two earned income amount together results in the FAP group earned income of \$1893. Again the Claimant's son's pays also fluctuated and the use of the pay of \$399 should not have been used if unusually high, however there was no evidence that the Department discussed the pay

fluctuation or attempted to determine a more accurate pay by prospecting income or requesting a pay history. .

Lastly the Department included \$574 of unearned income (unemployment) in the FAP budget. Reviewing the unemployment compensation search provided by the Department the Claimant received unemployment in June 2014 of \$356. Exhibit 5

Unemployment benefits include all of the following:

- Unemployment benefits (UB) available through the Michigan Unemployment Insurance Agency (UIA) and comparable agencies in other states.
- Supplemental unemployment benefits (SUB pay) from an employer or other source.
- Trade Readjustment Act (TRA) payments.

Count the gross amount as unearned income.

Sometimes benefits are reduced because the individual has earnings. In such cases, the reduced amount is the gross amount. BEM 503 (July 1, 2014) p.34-35.

Based upon these calculations reviewed in this Decision, it is clear the Department did not meet its burden of proof to demonstrate how it determined the reduced FAP benefit amount of \$99 beginning [REDACTED], as the earned income and unemployment income as determined by the Department are incorrect. It is clear that the entire FAP budget for August must be recalculated based upon a failure of the Department to meet its burden of proof and failure to properly determine earned income when income fluctuates.

The issue in this case that was able to be discerned after receiving income documents, is that the Department did not take into account fluctuating income of the Claimant and her son. The Claimant's income, based upon employment, fluctuates and she also applies for and receives underemployment when her earned income is reduced based upon work hours. The Claimant also credibly testified that her employer provided the Department a letter confirming fluctuating income. Given this situation, the Department is required to prospect the earnings in order to properly calculate the FAP benefits.

In prospecting income based on past income, the Department is required to use income from the past thirty days if it appears to accurately reflect what is expected to be received in the benefit month and should discard any pay that is unusual and does not reflect the normal, expected pay amounts. BEM 505 (July 2014), p. 5. If income received in the past 30 days is not a good indicator of

future income, and the fluctuations of income during the past 60 or 90 days appear to accurately reflect the income that is expected to be received in the benefit month, the Department must use income from the past 60 or 90 days for fluctuating or irregular income. BEM 505, pp. 5-6. Whenever possible, the Department is required to seek input from the client to establish an estimate. BEM 505, p. 2.

Because of the fluctuations in Claimant's biweekly pay, the Department should have considered 60 days, or possibly more days, of employment income in prospecting her income, particularly while conducting the redetermination and should have had this information available at the time it recalculated Claimant's FAP benefits. Furthermore, it should have consulted Claimant concerning her circumstances and discarded the inordinately high checks for both the Claimant and her son because they exceeded their normal pay.

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 calculated the Claimant's FAP benefits and failed to properly prospect earned income correctly.

DECISION AND ORDER

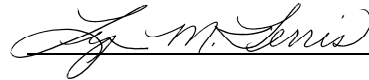
Accordingly, the Department's decision is

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 [REDACTED], and properly prospect income after discussing the matter with the Claimant and her son and correctly determine unemployment benefits received.
2. The Department shall issue a FAP supplement to the Claimant, if applicable after recalculating the FAP benefits, for FAP benefits she was otherwise eligible to

receive in accordance with Department policy.



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

Date Signed: **9/1/2015**

Date Mailed: **9/1/2015**

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:

