

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-17717
Issue No.: 3015
Case No.: [REDACTED]
Hearing Date: April 28, 2011
DHS County: Macomb (50-36)

ADMINISTRATIVE LAW JUDGE: Jan Leventer

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to Michigan Compiled Laws (MCL) 400.9 and 400.37 and Claimant [REDACTED] request for a hearing. After due notice, a hearing was held on April 28, 2011, at the Macomb County Sterling Heights District Office. Claimant appeared and testified at the hearing. [REDACTED] appeared and testified as the Authorized Representative for Claimant. [REDACTED], appeared and testified for the Department of Human Services (DHS).

ISSUE

Whether Claimant's Food Assistance Program (FAP) allotment of \$16 was determined in accordance with DHS policies and procedures?

FINDINGS OF FACT

The Administrative Law Judge, based on competent, material, and substantial evidence in the record and on the entire record as a whole, finds as fact:

1. On August 6, 2010, Claimant applied for FAP benefits with DHS.
2. In August 2010, Claimant did not have shelter expenses.
3. Beginning August 6, 2010, DHS awarded Claimant \$16 monthly FAP benefits, prorated to \$13 for August 6-31, 2010.
4. On September 1, 2010, Claimant rented an apartment at the rate of \$715 per month.

5. As of September 1, 2010, DHS failed to include a shelter deduction in the calculation of Claimant's FAP benefits.
6. DHS continued to pay FAP benefits of \$16 per month to Claimant.
7. On January 20, 2011, Claimant filed a Request for a Hearing with DHS.

CONCLUSIONS OF LAW

FAP was established by the U.S. Food Stamp Act of 1977 and is implemented by Federal regulations contained in Title 7 of the Code of Federal Regulations. DHS administers FAP pursuant to MCL 400.10 *et seq.* and Michigan Administrative Code Rules 400.3001-400.3015. DHS' policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables (RFT). These manuals are available online at www.michigan.gov/dhs-manuals.

The DHS administrative manuals are the policies and procedures DHS officially created for its own use. While the DHS manuals are not laws created by the U.S. Congress or the Michigan Legislature, they constitute legal authority which DHS must follow. It is to the manuals that I look now in order to see what policy applies in this case. After setting forth what the applicable policy is, I will examine whether it was in fact followed in this case.

In BEM 554, "FAP Allowable Expenses and Expense Budgeting," two procedures are set forth which govern my decision in this case. First, regarding how to budget shelter expenses, BEM 554 states that expenses are to be budgeted in the same calendar month as the month the benefits are to be paid. Second, BEM 554 states that rent is a housing expense which can be used in the shelter deduction in calculating FAP benefits. BEM 554, pp. 2, 10.

At the Administrative Hearing on April 28, 2011, the DHS Specialist agreed that DHS error occurred, and the Specialist agreed to recalculate Claimant's FAP benefits as of October 1, 2010, including the deduction for shelter expenses. However, Claimant seeks a ruling that her FAP benefits were also miscalculated from August 6-September 30, 2010 as well.

In making my decision, I have reviewed all of the testimony and evidence in this case as a whole. I reviewed the shelter documentation presented by Claimant, and I find and conclude that this documentation establishes that she did not have shelter expenses in the month of August 2010 but that on September 1, 2010, she moved into an apartment and paid rent. Accordingly, I find that DHS must recalculate benefits including a shelter

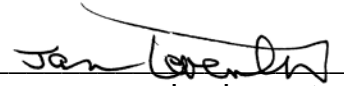
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deduction as of September 1, 2010, but not for August 6-31, 2010, in order to provide Claimant with the FAP benefits to which she is entitled.

In conclusion, based on the findings of fact and conclusions of law above, I find and conclude that Claimant is entitled to a recalculation of her FAP benefits beginning September 1, 2010, including a shelter deduction for her shelter expenses. DHS is REVERSED.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, states that DHS is REVERSED in this case. IT IS ORDERED that DHS shall redetermine Claimant's FAP benefits from September 1, 2010, to the present, including the deduction for shelter expenses as of September 1, 2010, and provide Claimant with all supplemental retroactive benefits to which she is entitled, in accordance with DHS policies and procedures.



Jan Leventer
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: May 5, 2011

Date Mailed: May 5, 2011

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 60 days of the filing of the original request.

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The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

JL/pf

cc:

