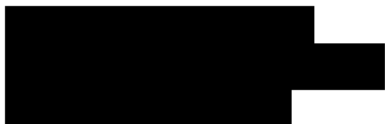


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No.: 201222290
Issue No.: 3003
Case No.: [REDACTED]
Hearing Date: January 26, 2012
Wayne County DHS (43)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the claimant's request for a hearing. After due notice, a telephone hearing was held on January 26, 2012 from Detroit, Michigan. The claimant appeared and testified. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, appeared and testified.

ISSUE

The issue is whether DHS properly determined Food Assistance Program (FAP) benefits for Claimant effective 12/2011.

FINDINGS OF FACT

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

1. Claimant was an ongoing FAP benefit recipient.
2. On an unspecified date, DHS redetermined Claimant's FAP benefit issuances effective 12/2011 based on a property tax amount which failed to include a solid waste fee that was included on Claimant's property tax bill as "special fees".
3. DHS determined that Claimant was eligible for \$215/month in FAP benefits effective 1/2012.
4. On 12/21/11, Claimant requested a hearing to dispute the FAP benefit issuance for 12/2011.

CONCLUSIONS OF LAW

The Food Assistance Program (formerly known as the Food Stamp Program) is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). DHS administers the FAP pursuant to Michigan Compiled Laws 400.10, *et seq.*, and Michigan Administrative Code R 400.3001-3015. DHS regulations are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT). Updates to DHS regulations are found in the Bridges Policy Bulletin (BPB).

In the present case, Claimant objected to a determination in FAP benefits effective 12/2011. FAP benefits are affected by several factors including: household members, income, housing expenses, child support expenses, dependent care expenses, medical expenses and various DHS credits and calculations. In the present case, all FAP benefit factors were not disputed other than whether DHS properly credited Claimant's property tax obligation.

Property taxes, state and local assessments and insurance on the structure are allowable expenses. BEM 554 at 10. Acceptable verification of property taxes includes a copy of tax, insurance, assessment bills or a collateral contact with the appropriate government or insurance office. *Id.*

DHS contended that Claimant's property tax obligation credit properly excluded a solid waste fee assessment. DHS contended that the solid waste fee is a utility-related issue and would properly be part of the standard utility credit, not a property tax credit.

The testifying DHS specialist alluded to an unidentified policy which allegedly directed specialists to exclude the solid waste fee from a property tax credit when determining FAP benefit eligibility. DHS was given additional time to submit or cite the allegedly supportive policy. DHS ultimately failed to cite any supporting policy for their decision.

There is a pending case within Michigan courts concerning whether Detroit's solid waste fee is truly a fee or a tax. As of the date of this decision, the courts have not yet rendered a final decision on the issue. The Michigan Court of Appeals previously found that the fee was not a tax but the decision was reversed upon appeal and remanded for further findings which have yet to be published. Thus, no conclusion can be made from the current legal wrangling of the issue.

If the fee is listed on a property tax bill, the most logical conclusion that can be drawn is that the fee is an assessment which should be part of the property tax credit. Had Claimant's residential city wanted to make a solid waste fee part of the water bill, they could have; they did not. Had DHS wanted to specifically exempt the solid waste fee

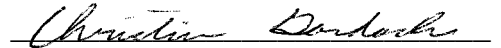
from a property tax credit, they could have; they did not... or at least DHS provided no evidence of doing so. Based on the presented evidence, it is found that DHS improperly reduced Claimant's property tax credit by failing to factor a solid waste fee.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS improperly calculated Claimant's property tax obligation by reducing it by a solid waste fee. It is ordered that DHS:

- (1) recalculate FAP benefits effective 12/2011 based on the full property tax obligation, which should include a credit for payment of a solid waste fee; and
- (2) supplement Claimant for any FAP benefits not received as a result of the DHS error.

The actions taken by DHS are REVERSED.


Christian Gardocki
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: February 3, 2012

Date Mailed: February 3, 2012

NOTICE: Michigan Administrative Hearing System (MAHS) 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. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request. (60 days for FAP cases).

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.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:

201222290/CG

- misapplication of manual policy or law in the hearing decision,
- typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
- the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail to:
Michigan Administrative hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

CG/hw

cc:

