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

IN THE MATTER OF:

███████████████

Reg. No.:   20123611
Issue No.:   3002; 5016
Case No.:   ███████████
Hearing Date: November 9, 2011
County: Wayne (19)

ADMINISTRATIVE LAW JUDGE: Susan C. Burke

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claimant's request for a hearing. After due notice, a telephone hearing was held on November 9, 2011, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of Department of Human Services (Department) included C. Al-Lami and F. Brown.

ISSUE

Did the Department properly calculate Claimant's Food Assistance Program (FAP) grant?

Did the Department properly deny Claimant's request for State Emergency Relief (SER) assistance with energy or utility service(s)?

FINDINGS OF FACT

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

1. Claimant was a recipient of FAP.

2. On September 6, 2011, Claimant applied for SER assistance with energy or utility service.

3. On September 6, 2011, the Department sent to Claimant a State Emergency Relief Decision Notice of denial and a Notice of Case Action specifying the FAP benefit amount allowed as of September 1, 2011.

4. On September 19, 2011, the Department received Claimant's hearing request, protesting the amount of FAP benefits and the SER denial.

CONCLUSIONS OF LAW

FAP

The Food Assistance Program (FAP) [formerly known as the Food Stamp (FS) 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). The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, *et seq.*, and 1999 AC, Rule 400.3001 through Rule 400.3015.

Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

BEM 505 instructs that the average bi-weekly gross check amount is multiplied by 2.15.

BEM 550 instructs that eighty percent of the earned income of a household be added to unearned income to determine gross income. Adjusted gross income in a household of three is determined by subtracting the standard amount found in RFT 255. Monthly net income for FAP purposes is then determined by subtracting allowable expenses, such as a shelter deduction, if any. BEM 554.

Housing expenses include rent, mortgage, a second mortgage, home equity loan, required condo or maintenance fees, lot rental or other payments including interest leading to ownership of the shelter occupied by the FAP group. The expense must be a continuing one. Payments that exceed the normal monthly obligation are not deductible as a shelter expense unless the payment is necessary to prevent eviction or foreclosure, and it has not been allowed in a previous FAP budget BEM 554, p. 10.

In the present case, Claimant acknowledges that she receives $400.00 in child support per month, but she states that her earned income is lower than that used by the Department. However, Claimant's Exhibit 1 shows paychecks of $484.60 and $177.82. for August 5, 2011 and August 19, 2011, respectively. Taking into account the multiplier of 2.15 as instructed by BEM 505, these figures are consistent with the Department's figures, which yield a net income after deductions of $370.00. RFT 260 instructs that a person in a group size of three with a net income of $370.00 is entitled to $415.00 per month in FAP benefits as of September 1, 2011. The Department was therefore correct in its calculation of Claimant's FAP benefit. It is noted that Claimant's FAP benefit may have decreased as of October 1, 2011 due to Department policy changes.

Claimant also argues that her rental late payment fees should be included in the FAP budget. However, Claimant did not produce a court-ordered eviction notice or other allowable documentation showing that the late fees are required to be paid to prevent an eviction. BEM 554. The Department was therefore correct in not including the late fees in the FAP budget.

SER

The State Emergency Relief (SER) program is established by 2004 PA 344. The SER program is administered pursuant to MCL 400.10, *et seq.,* and by final administrative rules filed with the Secretary of State on October 28, 1993. MAC R 400.7001-400-7049. Department of Human Services (Department or DHS) policies are found in the State Emergency Relief Manual (ERM).

ERM 101 states that a requirement for an SER payment to be issued is that the person applying for SER must have an emergency which threatens health, or safety and can be resolved through the issuance of SER.

In the present case, Claimant stated at the hearing that her utility emergency with DTE Energy was resolved subsequent to her September 6, 2011 application in that she and DTE Energy worked out a payment plan on September 9, 2011. A payment for SER would therefore not resolve the emergency relief requested in Claimant's September 6, 2011 application. Therefore, Claimant's request for hearing with respect to SER will be dismissed.

Claimant testified that DTE Energy has issued a new default notice. Claimant also presented Claimant's Exhibit 2, "Shut Off Protection Plan Default Notice", issued by DTE on October 27, 2011. Claimant may make a new application for SER with the Department based upon these new circumstances.

Based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated within the record, the Administrative Law Judge concludes that the Department properly calculated Claimant's FAP benefit amount. It is further concluded that the issue regarding SER will be dismissed as Claimant's emergency of September 6, 2011 was resolved pursuant to an agreement with DTE Energy.
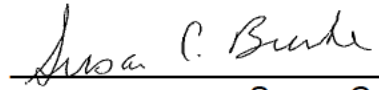
DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for reasons stated on the record, finds that the Department
☒ did act properly with respect to FAP.　　☐ did not act properly.

Accordingly, it is ORDERED that the Department's FAP calculation decision is ☒ AFFIRMED ☐ REVERSED for the reasons stated on the record.

It is further ORDERED that the matter regarding Claimant's SER application is DISMISSED as the emergency was resolved. ERM 101.

Susan C. Burke
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: <u>11/17/11</u>

Date Mailed: <u>11/17/11</u>

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.

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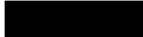
Claimant may request a rehearing or reconsideration for the following reasons:

- 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:

  - 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 at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

SCB/hw

cc:
Wayne County DHS