

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

IN THE MATTER OF:

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████████████████████

Reg. No.: 2014-4459
Issue No.: 3003
Case No.: ██████████
Hearing Date: November 12, 2013
County: Oakland (02)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

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. After due notice, a telephone hearing was held on November 12, 2013, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department or DHS) included ██████████ ██████████ Eligibility Specialist.

ISSUE

Did the Department properly calculate Claimant's Food Assistance Program (FAP) allotment effective August 2013, ongoing?

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 is an ongoing recipient of FAP benefits. See Exhibit 1.
2. Claimant's household group size is three and includes a senior/disabled/disabled veteran (SDV) member.
3. Effective August 1, 2013 to September 30, 2013, Claimant received \$12 in FAP benefits in each benefit month. See Exhibit 1.
4. On September 14, 2013, the Department sent Claimant a Notice of Case Action notifying her that her FAP benefits increased to \$13 effective October 1, 2013, ongoing. See Exhibit 1.

5. On September 25, 2013, Claimant filed a hearing request, protesting her FAP allotment. See Exhibit 1.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), Department of Human Services Reference Tables Manual (RFT), and Department of Human Services Emergency Relief Manual (ERM).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food Stamp Act of 1977, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 and Mich Admin Code, R 400.3001 to .3015.

Income calculation

As a preliminary matter, Claimant's FAP benefits decreased from \$526 in July 2013 to \$12 for August 2013. See Exhibit 1. Claimant testified that she is disputing her FAP benefits for August 2013, ongoing. Thus, this hearing will address Claimant's FAP allotment for her time period requested.

At the hearing, the Department presented an August 2013 FAP budget for review. See Exhibit 1. Claimant's household group size is three and her husband is a SDV member.

The amount of self-employment income before any deductions is called total proceeds. BEM 502 (July 2013), p. 3. Countable income from self-employment equals the total proceeds minus allowable expenses of producing the income. BEM 502, p. 3. Allowable expenses are the higher of 25 percent of the total proceeds, or actual expenses if the client chooses to claim and verify the expenses. BEM 502, p. 3.

In this case, the Department testified that the household earns \$500 in monthly self-employment income. The Department applied the 25 percent allowable expense to Claimant's \$500 self-employment income, which resulted in a total countable income of \$375. See Exhibit 1. Claimant did not dispute this amount.

Then, the Department indicated that Claimant's husband earns a total gross unearned income amount of \$2,131 in Retirement, Survivors, and Disability Insurance (RSDI) benefits, which Claimant did not dispute. See Exhibit 1. The Department counts the gross benefit amount of RSDI as unearned income. See BEM 503 (July 2013), p. 28.

Furthermore, the Department calculated a total net unearned income of \$2,506 (\$2,131 unearned income plus \$375 in earned income). See Exhibit 1. The Department also applied a 20% earned income deduction to Claimant's gross countable earned income. BEM 550 (July 2013), p. 1. Thus, 20 percent of the \$375 in self-employment income

eligible for earned income deduction is \$75, which results in a post earned income deduction income of \$2,431. See Exhibit 1.

FAP deductions

The Department also applied the proper standard deduction of \$148 for Claimant's group size of three. RFT 255 (October 2012), p. 1. It should be noted that effective October 1, 2013, the standard deduction increased to \$151 for a group size of three. See RFT 255 (October 2013), p. 1.

The Department also calculated a total medical deduction of \$570. See Exhibit 1. The Department testified that the medical deduction is only applicable to Claimant's husband because he is the only SDV member. The Department was unable to specifically testify how it calculated the husband's medical deduction. The Department, though, testified that it would only calculate Claimant's husband's current unpaid medical expenses. It should be noted that it was discovered during the hearing that the Department requested verification of Claimant's medical expenses subsequent to the hearing request.

For groups with one or more SDV member, the Department used medical expenses for the SDV member(s) that exceed \$35. BEM 554 (July 2013), p. 1. At application and redetermination, the Department considers only the medical expenses of SDV persons in the eligible group or SDV persons disqualified for certain reasons. BEM 554, p. 8. The Department estimates an SDV person's medical expenses for the benefit period. BEM 554, p. 8.

A list of allowable expenses are located in BEM 554. BEM 554, pp. 9-11. The Department estimates an SDV person's medical expenses for the benefit period. BEM 554, p. 11. The expense does not have to be paid to be allowed. BEM 554, p. 11. The Department allows medical expenses when verification of the portion paid, or to be paid by insurance, Medicare, Medicaid, etc. is provided. BEM 554, p. 11. The Department allows only the non reimbursable portion of a medical expense. BEM 554, p. 11. The medical bill cannot be overdue. BEM 554, p. 11. The medical bill is not overdue if one of the following conditions exists:

- Currently incurred (for example, in the same month, ongoing, etc.).
- Currently billed (client is receiving the bill for the first time for a medical expense provided earlier and the bill is not overdue).
- Client made a payment arrangement before the medical bill became overdue.

BEM 554, p. 11.

Finally, the Department verifies allowable medical expenses including the amount of reimbursement, at initial application and redetermination. BEM 554, p. 11. The Department verifies reported changes in the source or amount of medical expenses if the change would result in an increase in benefits. BEM 554, p. 11.

At the hearing, Claimant's hearing request provided a list of medical expenses that she, her husband, and additional household member incurred. See Exhibit 1. Claimant testified that she first received a verification of medical expenses subsequent to this hearing request. Claimant also testified she was unsure if she indicated in her June 2013 FAP application, if the FAP group had medical expenses. It is unclear if any verification of medical expenses was requested between the application and Claimant's hearing request.

Based on the foregoing information and evidence, the Department improperly calculated Claimant's medical deduction in accordance with Department policy.

First, Claimant's and her additional household member are not eligible for a medical deduction. BEM 554 all only allows medical expenses for the SDV member(s) that exceed \$35. BEM 554, p. 1. Because Claimant's husband is the only SDV member, the Department can only account for his medical expenses in excess of \$35. BEM 554, p. 1.

Second, the testimony is unclear if a verification of medical expenses was requested before the hearing request. However, Claimant's August 2013 budget includes a medical deduction, thus, it can be inferred that the Department did request and/or calculate Claimant's husband's medical expenses before the hearing request. Claimant properly provided a list of her husband's ongoing medical expenses. See Exhibit 1. The Department did not satisfy its burden of showing that it acted in accordance with Department policy because it was unable to testify how it calculated Claimant's husband's medical deduction. The Department will initiate verification of Claimant's husband's allowable medical expenses to determine if he is eligible for any medical deductions effective August 1, 2013, ongoing.

Shelter expenses

It should also be noted that for groups with one or more SDV member, the Department allow excess shelter expenses. BEM 554, p. 1. The Department presented an August 2013 excess shelter budget for review. See Exhibit 1. The Department indicated Claimant's monthly housing costs are \$0. See Exhibit 1. Claimant testified that she currently owns a home but it is in foreclosure and was in foreclosure as of August 2013.

The Department allows a shelter expense when the FAP group has a shelter expense or contributes to the shelter expense. BEM 554, p. 12. Shelter expenses are allowed when billed. BEM 554, p. 12. The expenses do not have to be paid to be allowed. BEM 554, p. 12. 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. BEM 554, pp. 12-13.

The expense must be a continuing one. BEM 554, p. 13. 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. 13. Additional expenses for optional charges, such as carports, pets, etc. are not allowed. BEM 554, p. 13.

Based on the foregoing information, Claimant is entitled to housing expenses even if she is in foreclosure effective August 1, 2013, ongoing. The Department allows a shelter expense when the FAP group has a shelter expense or contributes to the shelter expense. BEM 554, p. 12. Shelter expenses are allowed when billed. BEM 554, p. 12. The expenses do not have to be paid to be allowed. BEM 554, p. 12. Claimant continued to have a shelter expense, even if it is in foreclosure. As long as the Claimant was billed, it is an allowable expense. See BEM 554, p. 12. However, the Department will verify if Claimant has an allowable shelter expenses in accordance with Department policy effective August 1, 2013, ongoing.

Finally, the Department also gives a flat utility standard to all clients responsible for utility bills. BEM 554, pp. 14-15. The utility standard of \$575 encompasses all utilities (water, gas, electric, telephone) and is unchanged even if a client's monthly utility expenses exceed the \$575 amount. RFT 255 (October 2012), p. 1. It should be noted that the heat and utility standard decreased to \$553 effective October 1, 2013, ongoing. See RFT 255 (October 2013), p. 1.

Claimant testified that she had additional expenses. Again, Claimant's hearing request listed such additional expenses, which included heat, electricity, internet, phone, vehicle insurance, gasoline, car repair/maintenance, personal grooming supplies, cleaning, etc... See Exhibit 1. Claimant also submitted her water bill and vehicle insurance bill. See Exhibit A.

Based on the foregoing information and evidence, the Department properly applied only Claimant's \$575 heat and utility standard. Claimant's heat, electricity, internet, phone, water bill expenses are all included in the standard \$575 deduction and is unchanged even if a client's monthly utility expenses exceed the \$575 amount. RFT 255, p. 1. Second, there are no deductions listed in BEM 554 for Claimant's vehicle insurance, gasoline, car repair/maintenance, personal grooming supplies, cleaning, etc... See BEM 554, p. 1. Claimant is not entitled to these additional deductions. Claimant can only receive a deduction for actual costs of transportation for medical treatment or services. See BEM 554, p. 10.

In summary, the Department will initiate verification of Claimant's allowable shelter expenses and her husband's allowable medical expenses effective August 1, 2013, ongoing, in accordance with Department policy.

DECISION AND ORDER

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 improperly calculated Claimant's FAP benefits effective August 1, 2013, ongoing.

Accordingly, the Department's FAP 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. Begin recalculating the FAP budget for August 1, 2013, ongoing, including verification of Claimant's allowable shelter expenses and her husband's allowable medical expenses, in accordance with Department policy;
2. Issue supplements to Claimant for any FAP benefits she was eligible to receive but did not from August 1, 2013, ongoing; and
3. Notify Claimant in writing of its FAP decision in accordance with Department policy.



Eric Feldman
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: November 18, 2013

Date Mailed: November 18, 2013

NOTICE OF APPEAL: 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 or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

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).

A Request for Rehearing or Reconsideration may be granted 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 Department, AHR or the claimant 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 the hearing decision is mailed.

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 48909-07322

EJF/cl

cc:

[REDACTED]
[REDACTED]
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[REDACTED]