

**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.: 14-001774
Issue No.: 3008
Case No.: ██████████
Hearing Date: June 4, 2014
County: WAYNE-DISTRICT (18)

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 June 4, 2014, from Detroit, Michigan. Participants on behalf of Claimant included Claimant; and Claimant's ██████████. Participants on behalf of the Department of Human Services (Department or DHS) included ██████████, Assistant Payment Supervisor; and ██████████ Eligibility Specialist.

ISSUE

Did the Department properly calculate Claimant's Food Assistance Program (FAP) allotment in the amount of \$71 effective May 1, 2014?

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.
2. On April 10, 2014, the Department sent Claimant a Notice of Case Action notifying her that her FAP benefits decreased to \$71 effective May 1, 2014, ongoing. See Exhibit 1, pp. 19-24.
3. On April 28, 2014, Claimant filed a hearing request, protesting her FAP allotment. See Exhibit 1, pp. 17-18.

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 273. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001 to .3015.

In this case, Claimant is an ongoing recipient of FAP benefits. On April 7, 2014, Claimant applied for State Emergency Relief (SER) assistance. See Exhibit 1, p. 1. The Department testified that when the unearned income for both group members was updated, this affected the FAP benefits. See Exhibit 1, p. 1. Thus, on April 10, 2014, the Department sent Claimant a Notice of Case Action notifying her that her FAP benefits decreased to \$71 effective May 1, 2014, ongoing. See Exhibit 1, pp. 19-24.

It was not disputed that the certified group size is two and that both are senior/disabled/disabled veteran (SDV) members. The Department presented the May 2014 FAP budget for review. See Exhibit 1, pp. 8-10. The Department calculated a gross unearned income amount of \$1,451. See Exhibit 1, p. 9. This amount comprised of both Claimant and the additional group member's Retirement, Survivors, and Disability Insurance (RSDI) income. The Department counts the gross benefit amount of RSDI as unearned income. BEM 503 (January 2014), p. 28.

First, the Department testified that the additional group member received \$1,022 in RSDI income, which Claimant did not dispute. See Exhibit 1, pp. 14-16. Second, the Department testified that Claimant receives \$429 in monthly RSDI income, which Claimant did dispute. The Department presented Claimant's SOLQ document, however, it failed to show that she receives \$429 in RSDI income. See Exhibit 1, pp. 11-13. Claimant testified that she receives \$417 in RSDI income. Claimant testified, though, this amount is after a \$35 overpayment is deducted from her RSDI income. Claimant testified that she indicated in her SER application that her income is \$417, however, the Department did not have a copy of the application.

Sometimes benefits are reduced because of a previous overpayment. BEM 503, p. 28. In such cases, the reduced amount is the gross amount. BEM 503, p. 28. Amounts deducted by an issuing agency to recover a previous overpayment or ineligible payment are not part of gross income. BEM 500 (January 2014), p. 5. These amounts are excluded as income. BEM 500, p. 5. However, BEM 500 lists exceptions in which the overpayment amount must be included in gross income. See BEM 500, p. 5. One such

exception includes any portion of an overpayment (that is normally countable) if the original payment was excluded income when received. BEM 500, p. 5 (see also additional list in BEM 500).

Before determining eligibility, the Department gives the client a reasonable opportunity to resolve any discrepancy between her statements and information from another source. BAM 130 (April 2014), p. 8.

Based on the foregoing information and evidence, the Department improperly calculated Claimant's unearned income. There is a discrepancy as to Claimant's unearned income because Claimant testified that she notified the Department in a previous application that her unearned income is \$417. However, the Department calculated her unearned income to be \$429. This is clearly a discrepancy as to her unearned amount. See BAM 130, p. 8. Moreover, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it was unable to show how it calculated her RSDI income. Per BEM 500, Claimant's reduced RSDI amount due to the overpayment is possibly excluded income. See BEM 500, p. 5. As such, the Department will recalculate Claimant's unearned income in accordance with Department policy. See BAM 130, pp. 1-8; BEM 500, p. 5; and BEM 503, p. 28.

Additionally, the Department properly applied the \$151 standard deduction applicable to Claimant's group size of two. RFT 255 (December 2013), p. 1. Also, Claimant testified that she and the additional group member had monthly medical expenses, which was approximately \$90 per month.

For groups with one or more SDV member, the Department uses medical expenses for the SDV member(s) that exceed \$35. BEM 554 (February 2014), p. 1. 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. During the hearing, though, Claimant testified that she never reported to the Department her monthly medical expenses. Thus, it was proper for the Department to calculate Claimant's medical deduction in the amount of \$0 due to her failure to notify the Department of her medical expenses. See Exhibit 1, p. 9 and BEM 554, pp. 1 and 11.

Also, the Department properly applied the heat/utility standard for the Claimant in the amount of \$553. RFT 255, p. 1 and Exhibit 1, p. 8. Finally, Claimant also disputed her shelter expenses and testified that it increased to \$486, whereas the FAP budget indicated her monthly housing expenses were \$480. See Exhibit 1, p. 8.

For groups with one or more SDV member, the Department uses the excess shelter. See BEM 554, p. 1. The Department verifies shelter expenses at application and when a change is reported. BEM 554, p. 14. If the client fails to verify a reported change in shelter, the Department removes the old expense until the new expense is verified.

BEM 554, p. 14. Again, though, Claimant testified that she never notified the Department of the increase until this hearing. Thus, it was proper for the Department to calculate Claimant's housing expenses in the amount of \$480 due to her failure to notify the Department of the increase. See Exhibit 1, p. 8 and BEM 554, pp. 1 and 14.

Nevertheless, as stated above, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it improperly calculated Claimant's unearned income. The Department will recalculate Claimant's FAP benefits effective May 1, 2014, 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 May 1, 2014.

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 May 1, 2014, in accordance with Department policy;
2. Issue supplements to Claimant for any FAP benefits she was eligible to receive but did not from May 1, 2014, 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: **6/5/2014**

Date Mailed: **6/5/2014**

EJF/cl

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 party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (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 48909-07322

CC:

[REDACTED]
[REDACTED]
[REDACTED]
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