

**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.: 14-011264
Issue No.: 3008
Case No.: ██████████
Hearing Date: October 6, 2014
County: WAYNE-DISTRICT 17
(GREENFIELD/JOY)

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 October 6, 2014, from Detroit, Michigan. Participants on behalf of Claimant included Claimant, ██████████. Participants on behalf of the Department of Human Services (Department or DHS) included ██████████, Assistant Payment Worker.

ISSUE

Did the Department properly calculate Claimant's Food Assistance Program (FAP) allotment effective August 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 July 11, 2014, the Department sent Claimant a Notice of Case Action notifying her that her FAP benefits decreased to \$31 effective August 1, 2014, ongoing. See Exhibit 1, pp. 5-7.
3. On August 27, 2014, Claimant filed a hearing request, protesting her FAP allotment. See Exhibit 1, p. 2.

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 July 11, 2014, the Department sent Claimant a Notice of Case Action notifying her that her FAP benefits decreased to \$31 effective August 1, 2014, ongoing. See Exhibit 1, pp. 5-7. On August 27, 2014, Claimant filed a hearing request, protesting her FAP allotment. See Exhibit 1, p. 2.

It was not disputed that the certified group size is one and that Claimant is a senior/disabled/disabled veteran (SDV) member. The Department presented the August 2014 FAP budget for review. See Exhibit 1, pp. 11-12. The Department calculated a gross unearned income amount of \$755. See Exhibit 1, p. 11. This amount comprised of Claimant's Social Security Administration benefits (Retirement, Survivors, and Disability Insurance, Supplemental Security Income, and State SSI Payments (SSP)), which she did not dispute. See BEM 503 (July 2014), pp. 28-33 and Exhibit 1, pp. 8-10.

Then, the Department properly applied the \$151 standard deduction applicable to Claimant's group size of one, which resulted in an adjusted gross income of \$604. RFT 255 (December 2013), p. 1 and see Exhibit 1, p. 11.

The Department also calculated Claimant's housing costs to be \$176, which she did not dispute. See Exhibit 1, p. 13. Claimant testified that her housing costs increased to \$180 for September 2014, ongoing and provided the necessary verification. The Department testified that it did not receive such verification.

Based on the foregoing information, the Department properly calculated Claimant's housing costs for August 2014. Moreover, the Department provided verification of Claimant's rental obligations, which showed the last rental amount of \$176. See Exhibit 1, p. 4. It should be noted that Claimant's hearing request is dated for August 2014 and that she can request another hearing to dispute her FAP benefits for September 2014, ongoing (i.e., improperly calculated rental amount for September 2014, ongoing). See BAM 600 (October 2014), pp. 4-6.

Moreover, Claimant's budget indicated that she was not receiving the \$553 heat and utility standard (h/u). See Exhibit 1, p. 13. The budget indicates that Claimant receives the non-heat electric standard of \$127, the cooking fuel standard of \$43, and telephone standard of \$34. RFT 255, p. 1 and see Exhibit 1, p. 13.

At the hearing, the Department testified that Claimant is responsible to pay for electricity. Claimant testified that her heat is included in her rental obligation. However, Claimant testified that she does receive a separate bill for her electricity. Claimant testified that she does have an air conditioner in her room and that the costs of running her air conditioner would go towards her electric bill.

The heat/utility (h/u) standard covers all heat and utility costs including cooling, except actual utility expenses, for example, installation fees etc. BEM 554 (May 2014), p. 14. RFT 255 states that the h/u standard is \$553. See RFT 255, p. 1.

FAP groups who pay for cooling (including room air conditioners) are eligible for the h/u standard if they verify they have the responsibility to pay for non-heat electric. BEM 554, p. 16. Acceptable verification sources include, but are not limited to: current bills or a written statement from the provider for electric expenses or other verification sources listed in BEM 554. See BEM 554, p. 17.

A FAP group which has no heating/cooling expense but has a responsibility to pay for non-heat electricity separate from rent/mortgage or condo/maintenance fees, must use the non-heat electric standard. BEM 554, p. 19. The standard covers only non-heat electric. BEM 554, p. 19.

Based on the foregoing information, the Department improperly calculated Claimant's h/u standard deduction in accordance with Department policy. Claimant credibly testified that she pays for her cooling (including room air conditioners) because the use of her air conditioner goes towards her non-heat electric bill. Claimant is eligible for the h/u standard because she pays for her cooling (including room air conditioners). BEM 554, p. 16. Furthermore, BEM 554 states that Claimant is eligible for the h/u standard if they verify they (Claimant) have the responsibility to pay for non-heat electric. See BEM 554, p. 16. During the hearing, the Department acknowledged that Claimant is responsible to pay for her electricity. As such, it is not in dispute that Claimant is responsible to pay for the non-heat electricity and verification is or was provided. Therefore, Claimant is eligible for the h/u standard and the Department will recalculate her FAP budget and apply the h/u standard of \$553 effective August 1, 2014. See BEM 554, pp. 14-17 and RFT 255, p. 1.


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 did not act in accordance with Department policy when it improperly calculated Claimant's FAP benefits effective August 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 Claimant's FAP budget and apply Claimant's \$553 h/u standard for August 1, 2014, ongoing, in accordance with Department policy;
2. Issue supplements to Claimant for August 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: **10/6/2014**

Date Mailed: **10/6/2014**

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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]
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