

**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.: 14-008165
Issue No.: 3008
Case No.: ██████████
Hearing Date: September 2, 2014
County: Wayne-District 31

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 September 02, 2014, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included ██████████ ██████████, Eligibility Specialist.

ISSUE

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

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 June 30, 2014, the Department sent Claimant a Notice of Case Action notifying her that she was approved for \$130 in FAP benefits for July 2014.
3. On July 17, 2014, the Department sent Claimant a Notice of Case Action notifying her that she was eligible for \$15 in monthly FAP benefits effective August 1, 2014 ongoing.
4. On July 29, 2014, Claimant filed a request for hearing disputing the Department's actions.

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.

At the hearing, Claimant established that she was sent a June 30, 2014 Notice of Case Action informing her that she was approved for \$130 in FAP benefits for July 2014 and a July 17, 2014 Notice of Case Action informing her that she was approved for \$15 in monthly FAP benefits for August 1, 2014 ongoing. Although Claimant alleged that she only received \$15 in monthly benefits for July 2014, the eligibility summary produced by the Department showed that, consistent with the June 30, 2014 Notice of Case Action, she was issued \$130 for July 2014. Therefore, the Department acted in accordance with Department policy with respect to Claimant's FAP issuance for July 2014.

Claimant also disputed the Department's July 17, 2014 Notice of Case Action notifying her that effective August 1, 2014 her monthly FAP benefits were decreasing to \$15.

The Department provided a net income budget showing the calculation of FAP benefits for August 1, 2014 ongoing that was reviewed with Claimant at the hearing. The budget showed unearned income of \$1882, which the Department testified was the sum of Claimant's gross monthly \$1740.90 Retirement, Survivors and Disability Insurance (RSDI) income and her monthly \$140.84 pension income. Claimant did not dispute her pension income. However, she was concerned because she only received net RSDI income of about \$1200. However, under Department policy, the Department considers gross RSDI income in determining FAP eligibility. BEM 503 (July 2014), p. 28. Gross income includes amounts withheld from income which are voluntary, to repay a debt, or to meet a legal obligation, including amounts withheld for income taxes, health or life insurance premiums, Medicare premiums, loan payments, or garnishments. BEM 500 (July 2014), p. 4. However, amounts deducted by an issuing agency to recover a previous overpayment or ineligible payment are not part of gross income. BEM 500, p. 5.

In this case, Claimant testified that amounts withheld from her RSDI were due to payment of her Medicare premium, other health insurance, and outstanding bills. She expressly denied that any amounts were withheld from her RSDI by the Social Security Administration (SSA) due to a prior overpayment. Because SSA did not withhold any

RSDI due to a previous overpayment, the Department properly considered Claimant's gross RSDI income of \$1740.90 in calculating her FAP amount.

The evidence established that Claimant is a senior/disable/veteran (SDV) member of her FAP group and the sole member of her FAP group. BEM 550 (February 2014), pp. 1-2. Groups with an SDV member are eligible for the following deductions to income:

- Standard deduction.
- Dependent care expense.
- Excess shelter.
- Court ordered child support and arrearages paid to non-household members.
- Medical expenses for the SDV member that exceed \$35.
- An earned income deduction equal to 20% of any earned income.

BEM 554 (May 2014), p. 1; BEM 556 (July 2013), p. 3.

In this case, Claimant did not have any earned income and confirmed that she had no dependent care or child support expenses. Based on her FAP group size of one, the Department properly applied the \$151 standard deduction. RFT 255 (December 2013), p. 1. The only issues presented concerning the deductions available to Claimant were (i) the medical deduction and (ii) the excess shelter deduction.

The FAP net income budget showed a medical expense deduction of \$528. However, the Department did not present any evidence concerning the medical expenses considered in calculating this deduction. The SOLQ showed that Claimant was responsible for her monthly \$104.90 Part B Medicare premium. Claimant also testified that she paid a premium for additional health care coverage and had outstanding medical bills that she was responsible to pay. Both expenses may be included in the calculation of the medical expense deduction in accordance with policy. BEM 554, pp. 8-11. However, in this case, by failing to present any evidence concerning the expenses considered in calculating Claimant's medical expense, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it calculated the medical expense deduction.

In calculating Claimant's excess shelter deduction, the July 17, 2014 Notice of Case Action shows that the Department considered \$500 towards Claimant's monthly shelter expenses and \$553 towards her monthly utility expenses. Under Department policy, the \$553 mandatory heat and utility standard is the most favorable utility expense standard available to a FAP client. BEM 554, pp. 14-23; RFT 255 (December 2013), p. 1. With respect to the monthly shelter expenses, Claimant presented a mortgage account statement showing that her monthly mortgage obligation included a substantial payment of \$471.69 identified as "past due payment(s) amount." The Department testified that it did not consider the past due amount in determining Claimant's monthly shelter expenses.

Under Department policy, late fees and/or penalties incurred for shelter expenses are not an allowable expense. BEM 554, p. 12. However, any *continuing* housing expense payment that exceeds the normal monthly obligation is deductible as a shelter expense if (i) it is necessary to prevent eviction or foreclosure and (ii) it has not been allowed in a previous FAP budget. BEM 554, pp. 12-13. In this case, payment of the past due amount is not a continuing monthly housing expense. Rather, it is an arrearage of past due amounts. Furthermore, expenses are used from the same calendar month as the month for which benefits are being determined. BEM 554, p. 3. In this case, past due amounts are expenses for a prior month. Therefore, the Department acted in accordance with policy when it did not consider any past due amounts in calculating Claimant's shelter expense.

Although the Department properly considered Claimant's gross income and housing expenses, 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 calculated the medical expense deduction used to determine Claimant's FAP benefits.

DECISION AND ORDER

Accordingly, the Department's 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. Recalculate Claimant's FAP budget for August 1, 2014 ongoing;
2. Issue supplements to Claimant for any FAP benefits she was eligible to receive but did not from August 1, 2014 ongoing; and
3. Notify Claimant in writing of its decision.



Alice C. Elkin
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **9/8/2014**

Date Mailed: **9/9/2014**

ACE / tlf

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]
[REDACTED]
[REDACTED]