

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

IN THE MATTER OF:

██████████
██████████
██████████

Reg. No.: 14-009455
Issue No.: 3008
Case No.: ██████████
Hearing Date: September 10, 2014
County: WAYNE-DISTRICT (17)

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 September 10, 2014, from Detroit, Michigan. Participants on behalf of Claimant included Claimant, ██████████. Participants on behalf of the Department of Human Services (Department or DHS) included ██████████ Case Manager.

ISSUES

Did the Department properly implement and certify a previous Decision and Order (D&O) regarding an administrative hearing held on July 9, 2014?

Did the Department properly calculate Claimant's Food Assistance Program (FAP) allotment effective October 1, 2013, to July 31, 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. See Exhibit 2, pp. 1-11.
2. On July 9, 2014, Claimant attended a previous administrative hearing in which he disputed his FAP allotment. See Exhibit 1, pp. 5-9.
3. On July 18, 2014, the Administrative Law Judge (ALJ) sent a D&O in which it ordered the Department to recalculate Claimant's FAP benefits effective January 1, 2014, ongoing; issue supplements to Claimant for any FAP benefits that he was

entitled to receive but did not from January 1, 2014, ongoing; and Notify Claimant of its decision in writing (reg. no. 14-004391). See Exhibit 1, pp. 7-8.

4. On July 23, 2014, the Department sent Claimant a Notice of Case Action notifying him that his FAP benefits increased to \$216 effective June 1, 2014. See Exhibit 2, pp. 6-11.
5. On July 23, 2014, the Notice of Case Action also notified Claimant of a correction of benefits in which he would receive a FAP supplement of \$473 for the time period of October 1, 2013, to July 31, 2014. See Exhibit 2, p. 7.
6. On July 25, 2014, Claimant filed a hearing request, protesting his FAP allotment. See Exhibit 1, pp. 2-3.

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.

Preliminary matter

First, Claimant also disputed his FAP allotment for October 2014 because a Notice of Case Action (dated August 19, 2014) was sent informing him that his benefits would decrease. However, this ALJ lacks the jurisdiction to address Claimant's FAP allotment for October 2014 because it was subsequent to his hearing request. See Exhibit 1, p. 3. Claimant can request another hearing to dispute his FAP allotment for October 2014. See BAM 600 (July 2014), pp. 4-6.

Second, Claimant disputed the following actions by the Department: (i) the Department failed to properly implement and certify the previous D&O regarding an administrative hearing held on July 9, 2014; (ii) the Department improperly calculated and/or supplemented his FAP benefits for October 2013, ongoing; (iii) and the Department improperly calculated his FAP benefits for June 2014. Each of the Claimant's disputes will be addressed below.

Previous administrative hearing

Some hearing decisions require implementation by the local office. BAM 600, p. 40. The Department implements a decision and order within 10 calendar days of the mailing date on the hearing decision. BAM 600, p. 40. The Department completes the necessary case actions within 10 calendar days of the mailing date noted on the hearing decision. BAM 600, p. 42. The Department completes and sends the DHS-1843, Administrative Hearing Order Certification, to MAHS to certify implementation and place a copy of the form in the case file. BAM 600, pp. 41-42.

On July 9, 2014, Claimant attended a previous administrative hearing in which he disputed his FAP allotment. See Exhibit 1, pp. 5-9. On July 18, 2014, the ALJ sent a D&O in which it ordered the Department to recalculate Claimant's FAP benefits effective January 1, 2014, ongoing; issue supplements to Claimant for any FAP benefits that he was entitled to receive but did not from January 1, 2014, ongoing; and Notify Claimant of its decision in writing. See Exhibit 1, pp. 7-8.

On July 23, 2014, the Department sent Claimant a Notice of Case Action notifying him that his FAP benefits increased to \$216 effective June 1, 2014. See Exhibit 2, pp. 6-11. On July 23, 2014, the Notice of Case Action also notified Claimant of a correction of benefits in which he would receive a FAP supplement of \$473 for the time period of October 1, 2013, to July 31, 2014. See Exhibit 2, p. 7. During the hearing, Claimant disputed that the Department failed to properly implement and certify the previous ALJ's order.

Based on the foregoing information, the Department properly implemented and certified the previous D&O when it sent the Notice of Case Action dated July 23, 2014 (see reg. no. 14-004391). Even though the Claimant still disputes the recalculation of his FAP benefits, the Department acted in accordance with Department policy when it implemented and certified the D&O. See BAM 600, pp. 40-42.

June 2014 FAP benefits

On July 23, 2014, the Department sent Claimant a Notice of Case Action notifying him that his FAP benefits increased to \$216 effective June 1, 2014. See Exhibit 2, pp. 6-11.

It was not disputed that the certified group size is two and that Claimant is a senior/disabled/disabled veteran (SDV) member. The Department presented the June 2014 FAP budget for review from the Notice of Case Action dated July 23, 2014. See Exhibit 2, p. 7. The Department calculated a gross unearned income amount of \$1,300, which Claimant did not dispute. Exhibit 1, pp. 19-21; Exhibit 2, p. 7; and BEM 503 (July 2014), pp. 28-33. The Department also properly applied the \$151 standard deduction applicable to Claimant's group size of two. RFT 255 (December 2013), p. 1.

Additionally, the Department calculated Claimant's child support payments to be \$190.99. See Exhibit 1, p. 7. However, Claimant disputed that this amount should be

\$191. The Department acknowledged that the child support payments are \$191 and presented as evidence Claimant's child support payment history. See Exhibit 1, pp. 26-227. A review of Claimant's child support history indicates he has two payments for \$165.73 and \$25.27, which results in a total obligation amount of \$191. See Exhibit 1, pp. 26-27.

For child support income, the Department uses the average of child support payments received in the past three calendar months, unless changes are expected. BEM 505 (July 2014), p. 3. The Department includes the current month if all payments expected for the month have been received. BEM 505, p. 3.

Based on the foregoing information, the Department failed to properly calculate Claimant's child support income. See BEM 505, p. 3. Even though the Department's calculation of the child support income appears to be harmless error (one cent difference), there is further analysis below which still results in the Department recalculating Claimant's FAP benefits.

Next, the Department calculated Claimant's medical expenses to be zero, which he disputed. At the hearing, Claimant presented medical documents and/or expenses. See Exhibit A, pp. 3-7. Claimant testified that his medical expenses exceed \$135. It should be noted that Claimant's previous administrative decision indicated that he had not submitted any documentation to the Department for a medical expense deduction. See Exhibit 1, p. 6. Claimant did not provide medical expenses before today's hearing. Claimant testified that he was unable to provide the medical expenses beforehand because he could not get past the first administrative ruling.

For groups with one or more SDV member, the Department used medical expenses for the SDV member(s) that exceed \$35. BEM 554 (May 2014), p. 1. A list of allowable expenses is located in BEM 554. BEM 554, pp. 9-11. 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.

Based on the foregoing information and evidence, the Department properly calculated Claimant's medical expenses to be zero. Claimant failed to previously submit any documentation of his medical expenses to the Department until today's hearing. As such, the Department properly calculated Claimant's medical expense to be zero. See BEM 554, p. 1 and 9-12.

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

decreased from \$575 to \$553 effective October 1, 2013, ongoing. See RFT 255 (October 2012 and October 2013), p. 1.

Finally, the Department calculated Claimant's housing costs to be \$449, which he disputed. See Exhibit 1, p. 7. Claimant testified that his housing costs are \$449 plus \$198.89 in property taxes. Claimant kept referencing to the previous administrative hearing in which it stated the budget showed housing costs of \$198.89. See Exhibit 1, p. 6. Moreover, the hearing decision stated that Claimant submitted a redetermination in which he indicated that his housing costs had increased by \$436 and provided receipts of payments. See Exhibit 1, p. 6. As such, the hearing decision stated that the Department agreed that it failed to properly calculate Claimant's FAP benefits as it did not include the increased housing cost.

At the hearing, the Department testified that it calculated the \$449 monthly housing obligation based on a bankruptcy court letter. See Exhibit 1, p. 10. It appears that based on Claimant's testimony, the Department requested this documentation because it is date stamped July 23, 2014. See Exhibit 1, p. 10. However, the evidence packet also included property and tax information for the Claimant's residence. See Exhibit 1, p. 12. A review of the documentation indicated that Claimant had taxes/interest and fees for the property from 2009 to 2012. See Exhibit 1, p. 12. Moreover, Claimant provided as evidence that he had 2012 and 2014 City of Detroit tax obligations as well. See Exhibit A, pp. 1 and 2.

For groups with one or more SDV member, the Department uses excess shelter. BEM 554, p. 1. 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. Late fees and/or penalties incurred for shelter expenses are not an allowable expense. 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. Also, property taxes, state and local assessments and insurance on the structure are allowable expenses. BEM 554, p. 13.

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, remove the old expense until the new expense is verified. BEM 554, p. 14. The Department verifies the expense and the amount for housing expenses, property taxes, assessments, insurance and home repairs. BEM 554, p. 14.

Based on the foregoing information and evidence, the Department improperly calculated Claimant's housing expenses. The Department was aware that Claimant had an increase in housing costs as notated in the previous hearing decision. Moreover, the

evidence packet clearly indicated that Claimant paid property taxes. See Exhibit 1, p. 12. Claimant even provided further evidence of his property tax obligations. See Exhibit A, p. 1. Because the Department was aware of Claimant's increased housing costs/property tax obligations, it failed to properly calculate his expenses. See BEM 554, pp. 1 and 10-14. As such, the Department will recalculate Claimant's FAP benefits for June 2014.

Supplemental benefits

On July 23, 2014, the Department sent Claimant a Notice of Case Action notifying him of a correction of benefits in which he would receive a FAP supplement of \$473 for the time period of October 1, 2013, to July 31, 2014. See Exhibit 2, p. 7.

At the hearing, Claimant argued that he was owed further FAP supplements because the Department improperly calculated his benefits. The Department presented Claimant's FAP benefit summary inquiry, which showed specifically the amounts it supplemented to the Claimant for the above time period. See Exhibit 2, pp. 1-4. A review of Claimant's benefit summary inquiry discovered that he did not receive supplements for each benefit month. For example, Claimant received a FAP supplement for January 2014 in the amount of \$83; however, he did not receive a supplement for February 2014. See Exhibit 2, p. 2. It is unclear why Claimant did not receive supplements for both benefit months.

The local office and client or Authorized Hearing Representative (AHR) will each present their position to the ALJ, who will determine whether the actions taken by the local office are correct according to fact, law, policy and procedure. BAM 600, p. 34. Both the local office and the client or AHR must have adequate opportunity to present the case, bring witnesses, establish all pertinent facts, argue the case, refute any evidence, cross-examine adverse witnesses, and cross-examine the author of a document offered in evidence. BAM 600, p. 35. The ALJ determines the facts based only on evidence introduced at the hearing, draws a conclusion of law, and determines whether DHS policy was appropriately applied. BAM 600, p. 37.

Based on the foregoing information and evidence, the Department failed to satisfy its burden of showing that it properly calculated Claimant's FAP benefits for October 1, 2013, to July 31, 2014. BAM 600, pp. 34-37. The Department failed to present FAP budgets for the time period of October 2013 to July 2014 (other than June 2014) in order to determine if it properly calculated/supplemented Claimant's FAP benefits. As stated previously, the Department did present a FAP budget for June 2014; however, the Department still failed to properly calculate his June 2014 benefits. As such, the Department will recalculate Claimant's FAP benefits for the time period of October 1, 2013, to July 31, 2014, in accordance with Department policy.

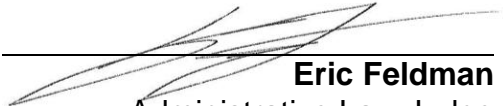
DECISION AND ORDER

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 (i) acted in accordance with Department policy when it properly implemented and certified the D&O dated July 18, 2014 (see reg. no. 14-004391); and (ii) improperly calculated Claimant's FAP benefits for October 1, 2013, to July 31, 2014.

Accordingly, the Department's decision is AFFIRMED IN PART with respect to D&O dated July 18, 2014 (see reg. no. 14-004391) and REVERSED IN PART with respect to Claimant's FAP benefits effective October 1, 2013, to July 31, 2014.

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 October 1, 2013, to July 31, 2014, in accordance with Department policy;
2. Issue supplements to Claimant for the time period of October 1, 2013, to July 31, 2014; 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: **9/16/2014**

Date Mailed: **9/16/2014**

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]
[REDACTED]
[REDACTED]
[REDACTED]