

**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.: 14-012037
Issue Nos.: 2000, 3008
Case No.: ██████████
Hearing Date: October 16, 2014
County: Macomb (20-Warren)

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 October 16, 2014, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included ██████████ ██████████
████████████████████

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 was an ongoing recipient of FAP benefits.
2. On August 22, 2014, the Department sent Claimant a Notice of Case Action notifying her that her FAP benefits would be \$120 for October 1, 2014, ongoing.
3. On September 10, 2014, Claimant requested a hearing concerning her FAP benefits and her and her son's Medical Assistance (MA) cases.

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.

As a preliminary matter, it is noted that Claimant requested a hearing on September 10, 2014, concerning her FAP and MA cases. At the hearing, Claimant testified that she was satisfied with the Department's actions concerning her MA cases and no longer wished to pursue a hearing concerning the MA issue. Therefore, Claimant's hearing request concerning her MA cases is dismissed, and this Hearing Decision addresses Claimant's FAP issue only.

The Department presented a FAP net income budget showing the calculation of Claimant's FAP benefits for October 1, 2014, ongoing that was reviewed with Claimant at the hearing. Claimant verified that she and her son received monthly Retirement, Survivors and Disability Insurance (RSDI) benefits totaling \$1,325, as shown on the budget, and that she and her son were the only members of her FAP group.

The deductions to income were also reviewed. The Department confirmed that Claimant was a senior/disabled/veteran (SDV) member of her group. See BEM 550 (February 2014), p. 1. For groups with one or more SDV members, the following deductions are available from the group's total 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(s) that exceed \$35.

BEM 554 (May 2014), p. 1.

Claimant confirmed that she had no day care or child support expenses. Claimant testified that she had presented medical expenses to the Department in September 2014, and the Department testified that those expenses, as well as food replacement supplement due to electrical outage, were considered in the September FAP budget and presented the eligibility summary showing increased FAP benefits for that month. Claimant confirmed that no other ongoing medical expenses had been verified. Under the circumstances presented, Claimant was eligible as of October 1, 2014, ongoing for

the following deductions from her unearned income: (i) the standard deduction of \$154 based on her two-member FAP group size, as shown on the budget; and (ii) an excess shelter deduction. BEM 554, pp. 1, 8-19; RFT 255 (October 2014), p. 1.

The excess shelter deduction takes into consideration Claimant's monthly housing expenses and the applicable utility standard. BEM 556 (July 2013), pp. 4-5. In this case, the Department testified that in calculating Claimant's housing expense of \$756.42, it considered Claimant's monthly mortgage expense of \$600, monthly property taxes of \$97.42 and monthly homeowner's insurance premiums of \$59. Claimant did not dispute the Department's calculation of her monthly shelter expenses. The issue presented at the hearing was the applicable utility standard.

The utility standard that applies to a client's case is dependent on the client's circumstances. The mandatory heat and utility (h/u) standard, which is currently \$553 and the most advantageous utility standard available to a client, is available only for FAP groups (i) that are responsible for heating expenses separate from rent or mortgage; (ii) that are responsible for cooling (including room air conditioners); (iii) whose heat is included in rent or fees **if** the client is billed for excess heat, has received the home heating credit in an amount greater than \$20 in the current month or the immediately preceding 12 months, or has received a Low-Income Home Energy Assistance Act (LIHEAP) payment or a LIHEAP payment was made on his behalf; (iv) whose electricity is included in rent or fees **if** the landlord bills the client separately for cooling; or (v) who have **any** responsibility for heating/cooling expense. BEM 554 (May 2014), pp. 16-19; RFT 255 (December 2013), p. 1.

FAP groups not eligible for the h/u standard who have other utility expenses or contribute to the cost of other utility expenses are eligible for the individual utility standards that the FAP group has responsibility to pay. BEM 554, p. 19. These include the non-heat electric standard (currently \$127) if the client has no heating/cooling expense but has a responsibility to pay for non-heat electricity; the water and/or sewer standard (currently \$74) if the client has no heating/cooling expense but has a responsibility to pay for water and/or sewer separate from rent/mortgage; the telephone standard (currently \$34) if the client has no heating/cooling expense but has a responsibility to pay for traditional land-line service, cell phone service, or voice-over-Internet protocol; the cooking fuel standard (currently \$43) if the client has no heating/cooling expense but has a responsibility to pay for cooking fuel separate from rent/mortgage; and the trash removal standard (currently \$14) if the client has no heating/cooling expense but has a responsibility to pay for trash removal separate from rent/mortgage. BEM 554, pp. 19-24; RFT 255, p. 1.

In this case, the Department acknowledged that Claimant had verified that she was responsible for heating expenses in a September 21, 2014, verification she provided to the Department. Therefore, the Department did not act in accordance with Department policy when it failed to apply the \$553 mandatory h/u standard deduction in calculating

Claimant's excess shelter deduction and, consequently, her monthly FAP benefits for October 1, 2014, ongoing.

From the evidence at the hearing, it is unclear when the Department removed the mandatory heat and utility standard deduction from the calculation of Claimant's FAP budget. The evidence established that, prior to September 19, 2014, Claimant had made the Department aware of her responsibility for heating expenses in May 2014 when she applied for State Emergency Relief (SER) assistance for her Consumer's Energy bill, which the Department approved. Furthermore, Claimant owns her home. Department policy provides that, for FAP groups that verify that they own or are purchasing the home that they occupy, the heat obligation needs to be verified only if questionable. BEM 554, p. 16. The Department failed to present any evidence that it had reason to question Claimant's responsibility for heating expenses or that it ever asked her to verify those expenses.

Under the facts presented, Claimant was eligible for the mandatory h/u standard from the time of application on April 16, 2014, ongoing. The eligibility summary shows that Claimant received the maximum FAP benefits available to a two-person FAP group in May 2014, but that her monthly FAP benefits decreased beginning June 1, 2014. Claimant is entitled to a supplement for any underissuances resulting from the Department's failure, if any, to apply the \$553 mandatory h/u standard to her FAP budget between June 1, 2014, and September 30, 2014. BAM 406 (July 2013), p. 3.

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 calculated Claimant's FAP benefits for October 1, 2014, ongoing and failed to satisfy its burden of showing that it acted in accordance with Department policy when it calculated Claimant's FAP benefits for June 1, 2014, to September 30, 2014.

DECISION AND ORDER

Claimant's September 10, 2014, hearing request concerning her MA cases is DISMISSED.

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. Recalculate Claimant's FAP budget for June 2014 ongoing;

2. Issue supplement to Claimant for any FAP benefits she was eligible to receive but did not from June 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: **10/20/2014**

Date Mailed: **10/20/2014**

ACE / pf

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]
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[REDACTED]
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