

**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.: 14-013359
Issue No.: 3008
Case No.: ██████████
Hearing Date: November 13, 2014
County: Wayne-District 55

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, an in-person hearing was held on November 13, 2014, from Hamtramck, Michigan. Claimant and ██████████, Claimant's son, appeared and testified on behalf of Claimant. ██████████, Eligibility Specialist, appeared and testified on behalf of the Department of Human Services (Department).

ISSUE

Did the Department properly calculate Claimant's Food Assistance Program (FAP) benefits for November 1, 2014 ongoing?

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 and his wife were ongoing recipients of FAP benefits.
2. On September 24, 2014, the Department sent Claimant a Notice of Case Action notifying him that effective November 1, 2014 his household's monthly FAP benefits were decreasing to \$117.
3. On September 29, 2014, Claimant requested a 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.

Claimant requested a hearing disputing the reduction of his monthly FAP benefits from \$357 to \$117. The Department testified that the reduction was due to the inclusion of Claimant's wife's unearned income in the calculation of Claimant's benefits and the change in shelter expenses due to changes in policy. The Department presented a FAP net income budget for November 1, 2014 ongoing that was reviewed with Claimant and his son at the hearing.

The budget shows unearned income totaling \$1009. Based on its hearing summary, the Department testified that this figure was the sum of (i) Claimant's monthly \$333 in monthly Retirement, Survivors and Disability Insurance (RSDI), (ii) his monthly \$323 in Supplemental Security Income (SSI), (iv) his monthly \$14 in State SSI Payment (SSP) (based on quarterly payments of \$42); (iv) his wife's monthly \$333 SSI payment; and (v) his wife's monthly \$14 SSP.

There was some confusion on the record concerning amounts withheld by the Social Security Administration (SSA) and whether amounts continued to be withheld. Claimant produced a letter from SSA dated September 29, 2014 showing that amounts were being withheld from his SSI due to a prior overpayment. A brief review of the letter during the hearing seemed to indicate that SSA was no longer withholding funds from Claimant's monthly SSA payments. However, a closer review of this letter after the hearing shows that from November 1, 2014 onward, Claimant was eligible for monthly SSI payments of \$333 but \$44 would be withheld to repay the overpayment. (Exhibit A, pp. 2, 10.) The SOLQ (Single Online Inquiry), the Department-accessible database showing a client's SSA benefits, confirmed that, as of November 1, 2014, Claimant received monthly SSI of \$289, with \$44 being withheld to recover an overpayment. The SOLQ report for Claimant's wife also showed that she received monthly SSI of \$289, with \$44 being withheld to recover an overpayment.

Department policy provides that amounts deducted by an issuing agency to recover a previous overpayment or ineligible payment are not part of gross income unless (i) the original payment now being recovered was excluded income when received or (ii) the

SSI recoupment was due to an intentional program violation (IPV). BEM 500 (July 2014), p. 5. Because there was no evidence that the amounts being withheld by SSA from Claimant's or his wife's SSI were due to an IPV or were previously excluded from the FAP budget when paid to Claimant and his wife, the Department did not act in accordance with Department policy when it used a figure other than \$289 for Claimant's monthly SSI payment and for his wife's monthly SSI payment.

The SOLQ also showed that Claimant received monthly RSDI of \$323. Because Claimant and his wife are SSI recipients, they are eligible for quarterly payments for SSP. The Department properly budgets a monthly SSP benefit amount as unearned income in a FAP budget. BEM 503, p. 33. Claimant agreed that he and his wife received quarterly SSP income but was not sure of the amount. Although there was some discussion during the hearing that Claimant and his wife would each receive \$14 monthly, a review of Department policy after the hearing shows that, for a couple in an independent living arrangement, the SSP is \$21 total. RFT 248 (January 2014).

Because the sum of Claimant's monthly \$289 SSI, his monthly \$323 RSDI, his wife's monthly \$289 SSI, and the couple's monthly \$21 SSP totals less than \$1009, the Department did not act in accordance with Department policy in calculating Claimant's group's income.

The deductions to income shown on the FAP net income budget were also reviewed with Claimant. Because Claimant and his wife receive SSI benefits, they are both senior/disabled/veteran (SDV) member of the FAP group. See BEM 550 (February 2014), pp 1-2. 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.

Based on Claimant's two-person FAP group, Claimant was eligible for a \$154 standard deduction, as shown on the budget. RFT 255 (October 2014), p. 1. Claimant confirmed that he had no day care, child support, or out-of-pocket medical expenses. Therefore, the Department properly provided no deduction for those expenses in the budget.

The only issue presented at the hearing was the calculation of the excess shelter deduction. In calculating a client's excess shelter expense, the Department considers the monthly shelter expenses and the utility standard applicable to the client's case, if

any. BEM 556 (July 2013), pp. 4-5. The Department's evidence showed that it considered monthly shelter expenses of \$450 and only the telephone utility expense of \$34. Claimant confirmed that he was not responsible for heating or cooling expenses, or any utility expense other than telephone. Therefore, the Department properly applied the \$34 telephone standard in calculating Claimant's excess shelter deduction. BEM 554, pp. 15-23; RFT 255, p. 1. Claimant also testified that his rent had increased from \$450 to \$500 and both he and his son credibly testified that they notified the Department in late September/early October in response to a shelter verification form sent by the Department. Their testimony that they notified the Department of the rent change is bolstered by the fact that the Department updated Claimant's FAP budget to reflect the new utility standard, presumably in response to a shelter verification form it received back from Claimant. Because the Department did not update Claimant's shelter expenses, the Department did not calculate Claimant's excess shelter deduction in accordance with Department policy.

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 budget for November 1, 2014 ongoing.

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 November 1, 2014 ongoing;
2. Issue supplements to Claimant for any FAP benefits he is eligible to receive but did not from November 1, 2014 ongoing.



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

Date Signed: **11/18/2014**

Date Mailed: **11/18/2014**

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 48909-8139

CC: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]