

**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.: 14-013512
Issue No.: 3008
Case No.: ██████████
Hearing Date: November 12, 2014
County: Wayne-District 49

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 November 12, 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 was an ongoing recipient of FAP benefits.
2. In September 2014, the Department recalculated Claimant's FAP budget to remove medical expenses it concluded were not recurring expenses and to include child support income that had been improperly excluded.
3. On September 24, 2014, the Department sent Claimant a Notice of Case Action advising her that she was approved for FAP benefits for April 2014 in the amount of \$63.
4. On September 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.

As a preliminary matter, it is noted that Claimant filed two hearing requests concerning changes in her benefits, one concerning her FAP benefits, the other concerning her Medical Assistance (MA) case. On the record, she confirmed that the September 26, 2014 hearing request resulting in the instant hearing concerned her FAP benefits.

At issue in this case is the reduction of Claimant's FAP benefits and the effective date of the reduction. At the hearing, the Department testified that it recalculated Claimant's FAP budget to remove an expense it concluded was improperly being budgeted and to include income that was improperly being excluded. The Department testified that, as a result of this recalculation, Claimant was eligible for only \$15 in monthly FAP benefits. However, the only notice the Department presented as being sent to Claimant concerning changes in her benefits was a September 24, 2014 Notice of Case Action. This Notice references only Claimant's benefits for April 2014, advising her that she was eligible for \$63 in FAP benefits for that month. Claimant denied receiving any other notice concerning a decrease in FAP benefits.

The Department must notify a client of a change in her FAP cases, except in limited circumstances not applicable in this case. BAM 220 (October 2014), pp. 3-4. If the change involves a negative action, the Department must provide timely notice of the change, meaning that the Department action must not be effective until 12 calendar days after the notice of the action is sent. BAM 220, p. 11. Because the Department's action in this case involved a decrease in FAP benefits due to changes in her budget, Claimant was entitled to timely notice. Because the Department did not timely notify Claimant of the decrease in her FAP benefits, the Department failed to act in accordance with Department policy and Claimant was entitled to ongoing benefits in the amount she was receiving prior to the Department's action until timely notice is properly provided.

It is further noted that the Department testified that Claimant's FAP budget was recalculated to (i) remove medical expenses that had been identified as recurring

monthly and (ii) include child support Claimant received that had not previously been budgeted.

With respect to child support income, Department policy provides that the calculation of income for FAP purposes includes child support payments received by a custodial party for an adult child or a child no longer living in the home, as the other unearned income of the payee as long as the money is not forwarded to the adult/child. BEM 503 (July 2014), p. 6. Unless changes are expected, the Department considers the average of child support payments received in the past three calendar months, excluding any payments that are unusual and not expected to continue. BEM 505 (July 2014), p. 3.

In this case, Claimant acknowledged that she receives child support for a child who is no longer in her home. Therefore, the Department can properly consider Claimant's child support income once it properly recalculates her budget. However, the Department has to consider the three months prior to the month Claimant is timely notified of any changes in FAP benefits that result. In this case, the Department testified that it recalculated Claimant's FAP budget in September 2014 using her child support income for June 2014, July 2014, and August 2014. Because the Department never notified Claimant of changes to her FAP benefits following the September 2014 recalculated FAP budget, it must recalculate child support income using the three months preceding the date it recalculates Claimant's FAP budget.

With respect to the medical deduction, Department policy provides that a deduction to income in a FAP budget is available for out-of-pocket medical expenses incurred by a senior/disabled/veteran (SDV) member in excess of \$35. BEM 554 (October 2014), p. 1. The Department may estimate the medical expenses of a client for the benefit period based on (i) verified allowable medical expenses, (ii) available information about the SDV member's medical condition and health insurance; and (iii) changes that can reasonably be anticipated to occur during the benefit period. BEM 554, p. 8.

In this case, the Department explained that it removed a \$575 medical expense reported in May 2013 and a \$578.53 reported in February 1, 2014 because those expenses had been budgeted as recurring expenses rather than one-time only expenses and, because Claimant had been receiving full-coverage Medicaid and Medicare, it assumed that the expenses were not out-of-pocket expenses. Claimant testified that she had ongoing medical bills for medication she was required to take in connection with a kidney condition that were not covered by her insurance and that she had presented documentation to her prior worker from her pharmacist and [REDACTED] showing these monthly expenses. Because the Department failed to establish that the medical expenses at issue were not estimated expenses not covered by insurance for the benefit period, the Department failed to satisfy its burden of showing that it properly excluded those medical expenses from Claimant's ongoing FAP budget.

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 recalculated Claimant's FAP budget to remove medical expenses and when it failed to properly notify Claimant of changes in her FAP case.

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. Remove any negative action reducing Claimant's monthly \$189 FAP benefits until timely notice of changes, if any, is sent to Claimant.



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]