

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-016237
Issue No(s): 3008
Case No.: [REDACTED]
Hearing Date: February 9, 2015
County: Wayne (82)

ADMINISTRATIVE LAW JUDGE: Eric J. 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 three-way telephone hearing was held on February 9, 2015, from Detroit, Michigan. Participants on behalf of Claimant included Claimant, [REDACTED]; witness 1/daughter-in-law, [REDACTED]; and witness 2/son, [REDACTED]. Participants on behalf of the Department of Human Services (Department or DHS) included [REDACTED] Eligibility Specialist; and [REDACTED], Manager.

ISSUE

Did the Department properly decrease Claimant's Food Assistance Program (FAP) allotment to \$16 effective December 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 is an ongoing recipient of FAP benefits.
2. On November 15, 2014, the Department sent Claimant a Notice of Case Action notifying her that her FAP benefits would decrease to \$16 effective December 1, 2014, ongoing because her shelter deduction amount has changed. See Exhibit 1, pp. 3-4.

3. The Notice of Case Action indicated Claimant's housing costs were \$228, she received the non-heat electric standard for \$124, and the telephone standard for \$34. See Exhibit 1, p. 4.
4. On an unspecified date, the Department budgeted her FAP benefits again for December 2014 as follows: housing expenses of \$248, non-heat electric standard of \$124, cooking fuel standard of \$47, and the telephone standard for \$34. See Exhibit 1, p. 11.
5. On November 24, 2014, Claimant filed a hearing request, protesting the Department's action. See Exhibit 1, pp. 2 and 12.
6. On December 2, 2014, the Michigan Administrative Hearing System (MAHS) sent Claimant a Notice of Hearing scheduling her for a hearing on December 15, 2014.
7. On December 15, 2014, Claimant requested a telephone hearing.
8. On December 17, 2014, MAHS sent both parties an Adjournment Order.
9. On January 27, 2015, MAHS sent Claimant a Notice of Hearing rescheduling her for a hearing on February 9, 2015.
10. On January 28, 2015, Claimant requested a telephone hearing and a list of her witnesses.

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.

It was not disputed that the certified group size is one and that the Claimant is a senior/disabled/disabled veteran (SDV) member. As noted in the Findings of Facts, the Department reran Claimant's budget subsequent to the Notice of Case Action. As such, this Administrative Law Judge (ALJ) will review Claimant's updated December 2014 FAP budget that the Department presented. See Exhibit 1, pp. 9-10. The Department calculated Claimant's gross unearned income to be \$897, which comprised of Claimant's Social Security benefits. See BEM 503 (July 2014), pp. 28-33 and see Exhibit 1, p. 9. The Department also properly applied the \$154 standard deduction

applicable to Claimant's group size of one. See RFT 255 (October 2014), p. 1 and see Exhibit 1, p. 9.

Next, the Department provided Claimant with zero for her medical deductions. See Exhibit 1, p. 9. Both witnesses argued that this calculation was improper and her monthly medical expenses were approximately \$55. Both witnesses testified that they did not present or notify the Department of her medical expenses. Both witnesses argued that the Department never notified them that they could submit such expenses as a deduction. In response, the Department testified it is Claimant's obligation to notify the Department of the medical expenses. Specifically, the Department argued that the process to report such changes (i.e., medical deductions) is located in the redetermination and/or application(s) she submits and signs.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (October 2014), p. 10. Other changes must be reported within 10 days after the client is aware of them. BAM 105, p. 10. These include, but are not limited to, changes in health or hospital coverage and premiums, persons in the home, etc...See BAM 105, p. 10.

For groups with one or more SDV member, the Department allows medical expenses that exceed \$35. BEM 554 (October 2014), p. 1. The Department estimates an SDV person's medical expenses for the benefit period. BEM 554, p. 11. The expense does not have to be paid to be allowed. BEM 554, p. 11. The Department allows medical expenses when verification of the portion paid, or to be paid by insurance, Medicare, Medicaid, etc. is provided. BEM 554, p. 11. The Department allows only the non-reimbursable portion of a medical expense. BEM 554, p. 11. The medical bill cannot be overdue. BEM 554, p. 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. The Department does not verify other factors, unless questionable. BEM 554, p. 11. Other factors include things like the allowability of the service or the eligibility of the person incurring the cost. BEM 554, p. 11.

Based on the above information, the Department properly calculated Claimant's medical expense deduction to be zero. Policy clearly states that the Claimant must report such changes, including medical expenses to the Department. See BAM 105, p. 10 and BEM 554, p. 11. Once the Department becomes aware of the reported change, the Department then initiates verification of the change (i.e., medical expenses). See BAM 105, p. 10 and BEM 554, p. 11. In this case, the evidence presented that Claimant failed to report her medical expenses to the Department and she did not even present any evidence of such alleged medical bills to this ALJ. As such, the Department acted in accordance with Department policy when it did not budget any of Claimant's alleged medical expenses as a deduction. See BAM 105, p. 10 and BEM 554, p. 11.

Next, the Department presented Claimant's FAP – Excess Shelter Deduction budget (shelter budget) for December 2014. See Exhibit 1, p. 11. The shelter budget indicated that Claimant's housing expenses were \$248; however, the Notice of Case Action indicated the housing expenses were \$228. See Exhibit 1, pp. 4 and 11. Both witnesses testified that the housing expenses were \$228; therefore, the Department will have to recalculate the FAP budget indicating the housing expenses as \$228. See BEM 554, pp. 1 and 12-14.

Finally, Claimant's reduction in FAP benefits from \$94 to \$16 was due mainly to the Department no longer budgeting Claimant's \$553 heat and utility (h/u) standard. See Exhibit 1, pp. 1 and 8-11. Instead, the Department provided Claimant with individual utility standards. Again, it should be noted that the updated shelter budget provided Claimant with the \$47 cooking fuel standard, which the Notice of Case Action did not indicate such an expense. See Exhibit 1, pp. 4 and 11.

For groups with one or more SDV members, the Department uses excess shelter. See BEM 554, p. 1. In calculating a client's excess shelter deduction, the Department considers the client's monthly shelter expenses and the applicable utility standard for any utilities the client is responsible to pay. BEM 556 (July 2013), pp. 4-5. The utility standard that applies to a client's case is dependent on the client's circumstances. The mandatory 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, mortgage or condominium/maintenance payments; (ii) that are responsible for cooling (including room air conditioners) and verify that they have the responsibility for non-heat electric; (iii) whose heat is included in rent or fees if the client is billed for excess heat by the landlord, (iv) who have received the home heating credit (HHC) in an amount greater than \$20 in the current month or the immediately preceding 12 months, (v) who have received a Low-Income Home Energy Assistance Act (LIHEAP) payment or a LIHEAP payment was made on his behalf in an amount greater than \$20 in the current month or in the immediately preceding 12 months prior to the application/recertification month; (vi) whose electricity is included in rent or fees if the landlord bills the client separately for cooling; or (vii) who have any responsibility for heating/cooling expense (based on shared meters or expenses). BEM 554, pp. 16-20; RFT 255, p. 1.

To show responsibility for heating and/or cooling expenses, acceptable verification sources include, but are not limited to, current bills or a written statement from the provider for heating/cooling expenses or excess heat expenses; collateral contact with the landlord or the heating/cooling provider; cancelled checks, receipts or money order copies, if current as long as the receipts identify the expense, the amount of the expense, the expense address, the provider of the service and the name of the person paying the expense; DHS-3688 shelter verification; collateral contact with the provider or landlord, as applicable; or a current lease. BEM 554, pp. 16-20. For groups that have verified 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.

FAP groups not eligible for the mandatory 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 (\$124 as of October 1, 2014) 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 \$77) 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 \$47) 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 \$21) if the client has no heating/cooling expense but has a responsibility to pay for trash removal separate from rent/mortgage. BEM 554, pp. 20-24; RFT 255, p. 1.

Sometimes the excess shelter deduction calculation will show more than one utility deduction. However, if the client is eligible for the \$553 mandatory h/u, that is all the client is eligible for. If she is not eligible for the mandatory h/u, she gets the sum of the other utility standards that apply to her case. BEM 554, pp. 15 and 20.

In this case, the witnesses testified that each individual apartment in Claimant's complex has their own central air conditioning unit. The witnesses testified that Claimant is responsible to pay for this cooling via her non-heat electric bill. Policy states that FAP groups who pay for cooling (including room air conditioners) are eligible for the h/u standard if they verify they have the responsibility to pay for non-heat electric. BEM 554, p. 16. As such, Claimant would be eligible for the \$553 mandatory h/u standard because she has cooling that is separate from her housing costs. See BEM 554, p. 16. Moreover, the Department must verify her non-heat electric expense. It should be noted that the Department is clearly aware that Claimant has non-heat electric expenses as it already provides her with the \$124 non-heat electric standard. See Exhibit 1, p. 11. Furthermore, acceptable verification sources included for non-heat electric include, but are not limited to current bills or a written statement from the provider for electric expenses. See BEM 554, p. 17. The Department's hearing summary acknowledged that Claimant pays rent. See Exhibit 1, p. 1. As such, the Department has such verification and will apply the \$553 mandatory h/u standard effective December 1, 2014. See BEM 554, p. 17.


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 calculated Claimant's medical deduction to be zero effective December 1, 2014; and (ii) did not act in accordance with Department policy when it improperly calculated Claimant's shelter expenses and Claimant's mandatory \$553 h/u standard effective December 1, 2014.

Accordingly, the Department's FAP decision is AFFIRMED IN PART with respect to medical expenses (deduction) and REVERSED IN PART with respect to shelter expenses and mandatory \$553 h/u standard.

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 December 1, 2014 (including Claimant's shelter expenses), ongoing, in accordance with Department policy;
2. Apply Claimant's \$553 mandatory h/u standard effective December 1, 2014, ongoing, in accordance with Department policy;
3. Issue supplements to Claimant for any FAP benefits she was eligible to receive but did not from December 1, 2014, ongoing; and
4. Notify Claimant of its FAP decision in accordance with Department policy.



Eric J. Feldman
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: February 13, 2015

Date Mailed: February 13, 2015

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 48909-8139

CC:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]