

**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.: 14-017009
Issue No.: 3008
Case No.: ██████████
Hearing Date: January 07, 2015
County: WAYNE-41 (FORT WAYNE)

ADMINISTRATIVE LAW JUDGE: Lynn Ferris

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 January 7, 2015, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant and a witness, ██████████. Participants on behalf of the Department of Human Services (Department) included ██████████ Hearing Facilitator.

ISSUE

Did the Department properly reduce the Claimant's Food Assistance?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Claimant is an ongoing recipient of Food Assistance (FAP) benefits.
2. On November 15, 2014, the Department reduced the Claimant's food assistance benefits to ██████████ per month, effective December 1, 2014. Exhibit 1
3. At the time of the budget calculation, the Claimant's rent was ██████████ and her unearned income was ██████████, plus a quarterly supplement received from the state of Michigan for a total of ██████████
4. The Claimant requested a hearing on November 24, 2014 protesting the reduction of her food assistance benefits.

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.

Additionally in this case, the Department reduced the Claimant's food assistance benefits effective December 1, 2014. During the hearing, the budgets prepared by the Department to support the reduction were reviewed in detail. The Claimant's benefits decreased from [REDACTED] \$ [REDACTED] per month. Exhibits 1 and 3. At the hearing, the Claimant credibly testified that she does not pay heat or utility expenses and that her rent at the time of the reduction was [REDACTED] per month. The Claimant did credibly testify that she did not pay heat and utilities, but did have a telephone expense due to a landline. The Claimant was given a [REDACTED] telephone standard that was incorporated in her housing expenses when the Department prepared her food assistance budget.

A review of the unearned income used by the Department to calculate the benefits determined that the Department used the wrong unearned income amount. Exhibit 1 and Exhibit 3. A SOLQ provided by the Department at the hearing clearly established that in November 2014, the Claimant received [REDACTED] in RSDI benefits, and also received a quarterly supplement in the amount of [REDACTED] from the state of Michigan. Exhibit 6. The Claimant's total unearned income totaled [REDACTED] per month based upon the evidence presented.

Based on these facts, it is clear that as regards unearned income, the Department incorrectly calculated the Claimant's food assistance benefits because it used unearned income totaling [REDACTED] monthly. There was no basis provided in the evidence to support this income amount. Therefore, the FAP budget as calculated by the Department as regards the unearned income amount is incorrect and must be recalculated.

The Claimant's food assistance excess shelter deduction was also reviewed and included an expense for housing in the amount of [REDACTED] rent, and zero dollars for the heat in utility standard due to the fact that the Claimant did not pay heat or electricity utilities. Exhibit 2. Thereafter, the excess shelter expense used in the budget for October prior to the FAP benefits reduction was reviewed to verify the discrepancy in the reduction. A review of the excess shelter deduction, indicated that for FAP benefits received prior to December 1, 2014, the Claimant was also entitled to a [REDACTED] heat in

utility standard and ██████ in rent housing expense, for a total shelter expense of ██████ Exhibit 4. The Department again used the incorrect monthly unearned income. Exhibits 4 and 5. The Department did grant Claimant a telephone standard expense of ██████ as the Claimant also credibly testified that she did pay a telephone expense. Exhibit 5.

As reviewed at the hearing, in calculating a Claimant's excess shelter deduction, the Department considers the client's monthly shelter expenses and any applicable utility standard for any utilities the client is responsible to pay. BEM 556 pp.4. Thus, the utility standard that applies to a client's case is dependent on the client's circumstances, the mandatory heat and utility standard, which is currently ██████ and is the most advantageous to utility standard available to the Claimant, (i.) is available only for FAP groups that are responsible for heating expenses separate from rent; (ii) responsible for cooling including room air conditioners and can verify they have the responsibility for nonheat electric; and (iii) whose heat is included in rent and 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 ██████ 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 ██████ 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 (October 2014), pp. 16-20; RFT 255 (October 2014), p. 14-24.

Effective May 1, 2014, the Department was required when processing applications, redeterminations or when a change was reported, to review and determine due to the changes making clients no longer automatically eligible for the heat and utility standard of \$553, whether clients were still eligible to receive a heat and utility standard. These changes in Department policy applied to all food assistance recipients equally. Thereafter, the Department began to gradually implement this change, which in this case resulted in the Claimant seeing a decrease in her FAP. Changes in the Department policy caused in some cases a reduction in food assistance benefits after the removal of the automatic heat and utility standards previously applied to their food assistance budgets, as is the case in this hearing.

Changes to BEM 554 effective October 1, 2014 removed the automatic mandatory heat in utility standard. For all FAP groups that received the h/u standard on or before February 7, 2014, the h/u standard will remain in place for a period of five months after the month of their first redetermination or first reported case change occurring on or after May 1, 2014. In order to continue receiving the h/u standard beyond the expiration of the five month period, the FAP group must meet the requirements of the MANDATORY HEAT AND UTILITY STANDARD section. BEM 554 p. 15

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 [REDACTED] if the client has no heating/cooling expense but has a responsibility to pay for non-heat electricity; the water and/or sewer standard [REDACTED] 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 [REDACTED] 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 [REDACTED] 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 [REDACTED] 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.

In this case, the testimony of the Claimant established that none of these exceptions applied except for the telephone standard which she was credited; however, as was previously determined, the Department used an incorrect monthly unearned income amount and thus the Benefits as calculated for October and November and December, 2014 are incorrect as the wrong unearned income was used.

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 when it reduced the Claimant's food assistance benefits to [REDACTED] in December and when it calculated October and November 2014 benefits.

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 reduced the Claimant's food assistance benefits effective December 1, 2014 and used the incorrect unearned income when calculating those benefits.

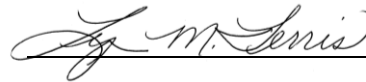
DECISION AND ORDER

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. The Department shall recalculate the Claimant's food assistance benefits for October, November and December 2014 to determine the correct benefit amount using the correct unearned income and the applicable excess shelter policy.
2. The Department shall issue the Claimant a food assistance supplement, if any, in accordance with Department policy.



Lynn Ferris
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **1/14/2015**

Date Mailed: **1/14/2015**

LMF/tm

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]
[REDACTED]