

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-017983
Issue No.: FAP
Case No.: [REDACTED]
Hearing Date: February 04, 2015
County: MACOMB-DISTRICT 36

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 commenced on January 14, 2015, but could not proceed until documentation of Guardianship was provided. The hearing was completed on February 4, 2015, by telephone from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED], Guardian. [REDACTED] the Claimant, was present. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Hearing Facilitator.

ISSUE

Did the Department properly determine Claimant's Food Assistance Program (FAP) monthly allotment?

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 FAP recipient.
2. The Department's policy changed and effective May 1, 2014, FAP recipients no longer automatically qualified to have a full heat/utility standard (h/u standard) included in the FAP budget.
3. A monthly rent expense was previously reported to the Department, but no heat or utility expenses had been reported.
4. On a September 2014 Redetermination form, it was reported that Claimant's rent was \$350, and no changes housing expenses were reported.
5. The FAP budget was calculated with the shelter expense, but no heat or utility expenses.

6. On November 15, 2014, a Notice of Case Action was issued to Claimant stating the FAP monthly allotment would decrease to \$█ effective December 1, 2014.
7. On December 1, 2014, a hearing request contesting the Department's actions was filed on Claimant's behalf.

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.

BEM 550, 554, and 556 address the FAP budget. In calculating the FAP budget, the entire amount of earned and unearned countable income is budgeted. Every case is allowed the standard deduction shown in RFT 255. BEM 550 (2-1-2014), p.1. The gross amount of the current Social Security Administration (SSA) issued Supplemental Security income (SSI) and Retirement Survivors and Disability Insurance (RSDI) benefits are counted as unearned income. Additionally, the quarterly State SSI Payment (SSP) is counted as unearned income. BEM 503 (7-1-2014) pp. 28 and 32-33. A shelter expense is allowed when the FAP group has a shelter expense or contributes to the shelter expense. BEM 554 (10-1-2014) p. 12. Heat and utility expenses can also be included as allowed by policy. Effective May 1, 2014, when processing applications, redeterminations, or when a change is reported clients are not automatically allowed the heat and utility (h/u) standard. The Department now includes only the utilities for which a client is responsible to pay. A FAP group which has a heating expense or contributes to the heating expense separate from rent, mortgage or condominium/maintenance payments must use the h/u standard. FAP groups whose heat is included in their rent or fees are not eligible for the h/u standard, unless they are billed for excess heat payments from their landlord. 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. Use the individual standard for each utility the FAP group has responsibility to pay. BEM 554, pp. 14-20.

Delayed Implementation of Changes Due to Agricultural Act of 2014 (End of the Dollar LIHEAP Program) 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.

Claimant contested the decrease in his FAP monthly allotment. Claimant's Guardian testified that as of December 1, 2014, Claimant has had to pay \$100 per month for heat and utilities separate from his rent. However, it appears this was first reported to the Department at the time of the January 14, 2015, hearing date. Accordingly, it was not something the Department could have considered at the time the November 15, 2014, Notice of Case Action was issued.

Previously, Claimant had not reported any utility expenses. Under the old policy, Claimant automatically qualified for the full h/u standard and received a FAP monthly allotment of \$194. However, the Department's policy has changed. As noted above, effective May 1, 2014, when processing applications, redeterminations, or when a change is reported clients are not automatically allowed the h/u standard. When this Redetermination was processed, Claimant has not reported any heat or utility expense. Accordingly, the Department re-calculated the FAP budget without any heat or utility standards included.

The Hearing Facilitator confirmed that Claimant's FAP benefit decreased to \$28 effective December 1, 2014, as indicated on the November 15, 2014, Notice of Case Action.

However, the Hearing Facilitator confirmed that this action was the first redetermination or first reported case change occurring on or after May 1, 2014. The Hearing Facilitator also testified that prior to this change, Claimant had been receiving the h/u standard. The Hearing Facilitator's testimony indicated Claimant's FAP case has been ongoing since before February 7, 2014, based on his reference to a December 2012 application. Accordingly, it appears that pursuant to the above cited policy regarding Delayed Implementation of Changes Due to Agricultural Act of 2014, all of the criteria were met and the h/u standard should have remained in place for a five month period.

The Hearing Facilitator testified that the FAP monthly allotment increased again in February 2015 and Claimant's guardian wanted to ensure it would continue at that amount. As noted during the hearing proceedings, this ALJ cannot review case actions taken after the December 1, 2014, hearing request was filed. However, Claimant can file a new request for hearing within 90 days of any case action notice(s) or to contest the current FAP benefit amount.

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 determined Claimant's FAP monthly allotment.

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. Re-determine Claimant's FAP monthly allotment retroactive to the December 1, 2014, effective date in accordance with Department policy.
2. Issue Claimant any supplement he may thereafter be due.



Colleen Lack
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **2/5/2015**

Date Mailed: **2/5/2015**

CL/hj

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:

A large black rectangular redaction covers the names and email addresses listed in the CC field. The redaction is composed of several overlapping black boxes of varying sizes, completely obscuring the text.