

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-018842
Issue No.: FAP
Case No.: [REDACTED]
Hearing Date: January 29, 2015
County: ALCONA

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 was held on January 29, 2015, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Assistance Payments Supervisor, and [REDACTED] Eligibility Specialist.

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 in a group of two with her disabled sister, (A.F.), who is a minor.
2. On November 14, 2014, a Redetermination interview was completed.
3. The home Claimant and A.F. live at in Michigan is paid for and at the time of the Redetermination there was no tax obligation in either of their names and there was no insurance payment.
4. Claimant has expenses for her home in North Carolina, which she wishes to maintain while living in Michigan to care for A.F. for an anticipated 10 year period while A.F. finishes school.

5. The Department did not include any shelter or medical expenses in the FAP budget.
6. On December 1, 2014, a Notice of Case Action was issued to Claimant, in part stating FAP was approved with a monthly allotment of \$■■■ effective December 1, 2014.
7. On December 8, 2014, Claimant orally requested a hearing contesting the Department's action.
8. On December 9, 2014, Claimant filed a written request for hearing contesting the Department's action¹.

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. BEM 503 (7-1-2014) pp. 28 and 32. 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

¹ On the December 9, 2014, hearing request, Claimant also marked that she was contesting a Medical Assistance (MA) determination for the other household member. However, the parties agreed that the MA issue has been resolved. Claimant withdrew the MA portion of her hearing request on the record. Therefore, the MA portion of this appeal is DISMISSED.

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. Certain verified allowable medical expenses can also be included in the FAP budget. Allowable medical expenses can include transportation to secure medical treatment or services. BEM 554, pp. 8-12.

Housing expenses include rent, mortgage, a second mortgage, home equity loan, required condo or maintenance fees, lot rental or other payments including interest leading to ownership of the shelter occupied by the FAP group. Property taxes, state and local assessments and insurance on the structure are allowable expenses. Do not allow insurance costs for the contents of the structure, for example, furniture, clothing and personal belongings. BEM 554, pp. 12-13.

Allow shelter costs for a home temporarily unoccupied by the FAP group due to: employment or training away from home; illness; or abandonment caused by a natural disaster or casualty loss. Include shelter costs for a temporarily unoccupied home, provided all of the following are true: the FAP group intends to return to the home; the current occupants of the home, if any, are not claiming shelter costs on that home for FAP purposes; and the home is not being leased or rented to others during the FAP group's absence. BEM 554 p. 24.

The FAP group consists of Claimant and her disabled sister A.F. The testimony indicated Claimant moved to Michigan to live with and care for A.F. for an anticipated 10 year period while A.F. finishes school.

Claimant asserts that shelter expenses should be included in the FAP budget. Claimant has expenses for her home in North Carolina, which she wishes to maintain while living in Michigan to care for A.F. for the anticipated 10 year period. Additionally, Claimant provided a written verification stating A.F. pays Claimant \$500 per month for room and board. Claimant testified she gets this payment from A.F.'s Conservator and it is used to pay the bills. It was uncontested that the home Claimant and A.F. are living in is paid for. Claimant explained that while Probate is still being finalized for another family member's estate, the home will be jointly owned by multiple siblings, with A.F. having a 2/5 share and a life estate. Claimant indicated that taxes were not paid on the home after their father died. The taxes had been in another sister's name, who is now deceased. Claimant testified that in December 2014, the taxes were changed to be in her name. Further, Claimant indicated there has been no insurance payment for the home because the insurance was allowed to lapse.

The Department has not included a shelter expense in the FAP budget. The local office sought a policy clarification regarding shelter expenses for Claimant's home in North Carolina. The emailed response from the policy unit states that this expense is not

allowed because 10 years is not considered a temporary absence. The Department further indicated that no expenses for the home in Michigan were allowed because the home was already paid for and there was no indication that Claimant or A.F. were paying taxes or insurance.

Based on the information available at the time of the Redetermination, the Department properly did not allow a shelter expense. The policy does not give a specific time period that a home can be considered temporarily unoccupied. However, this ALJ agrees with the policy unit that the anticipated 10 year period in this case is excessive to be considered a temporary absence. Further, the room and board payment A.F. pays Claimant cannot be considered a shelter expense. As noted above, the policy does specify what is allowed to be counted as a housing expense and shelter cost. It was uncontested that at the time of the Redetermination, the home had already been paid for, there was no insurance payment, and there was no tax obligation in the name of either FAP group member. Accordingly, there was no countable shelter cost for this home. It is noted that the full heat and utility standard was allowed in the FAP budget. Accordingly, the Department did consider utility expenses that are paid by Claimant and A.F. in calculating the FAP budget.

The Department confirmed that with verification that the tax bill has now been put in Claimant's name, a shelter expense can be considered for ongoing FAP eligibility for this tax obligation.

However, the evidence shows that the Department did not include any medical expenses in the FAP budget, despite being aware that A.F. is very disabled. Medical transportation costs were noted on the Redetermination form. As indicated during the hearing proceedings, A.F. may also have other allowable medical expenses. There was no evidence that the Department requested any needed verification(s) to include allowable medical expenses in the FAP budget. Accordingly, the determination of the FAP monthly allotment cannot be upheld.

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 monthly FAP 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 monthly FAP allotment retroactive to the December 1, 2014, effective date, in accordance with Department policy.
2. Issue Claimant any supplement she may thereafter be due.



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

Date Signed: **2/4/2015**

Date Mailed: **2/4/2015**

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:

