

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

IN THE MATTER OF:

██████████
██████████
██████████

Reg. No.: 14-019089
Issue No.: 3008
Case No.: ██████████
Hearing Date: February 25, 2015
County: WAYNE-DISTRICT 18
(TAYLOR)

ADMINISTRATIVE LAW JUDGE: Eric 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 telephone hearing was held on February 25, 2015, from Detroit, Michigan. Participants on behalf of Claimant included Claimant, ██████████. Participants on behalf of the Department of Human Services (Department or DHS) included ██████████, Eligibility Specialist.

ISSUE

Did the Department properly decrease Claimant's Food Assistance Program (FAP) allotment effective January 1, 2015?

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. In December 2014, Claimant had a redetermination review in which the Department indicated Claimant was only responsible for non-heat electric and it resulted in a decrease of her FAP assistance. See Exhibit 1, p. 1.
3. On December 6, 2014, the Department sent Claimant a Notice of Case Action notifying her that her FAP benefits decreased to ██████████ effective January 1, 2015, because her shelter deduction and net unearned income amounts had changed. See Exhibit 1, pp. 3-4.

4. Claimant indicated the following: (i) her gas/cooking fuel expenses is included in her rent; (ii) she has a heating expense separate from her rent because her townhouse unit shares a furnace; and (iii) she has a cool expense separate from her rent because her townhouse unit has central air condition.
5. Claimant is responsible for non-heat electric expenses. See Exhibit 1, pp. 7-8.
6. On December 15, 2014, Claimant filed a hearing request, protesting the Department's action. See Exhibit 1, p. 2.
7. On January 22, 2015, the Michigan Administrative Hearing System (MAHS) sent both parties a Notice of Hearing, scheduling a hearing on February 2, 2015.
8. On February 4, 2015, the Administrative Law Judge (ALJ) sent both parties an Adjournment Order to reschedule the hearing.
9. On February 10, 2015, MAHS sent both parties a Notice of Hearing, rescheduling the hearing for February 25, 2015.
10. On February 25, 2015, both parties attended the hearing and the hearing proceeded accordingly.

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 Claimant is a senior/disabled/disabled veteran (SDV) member. The Department presented the January 2015 FAP budget for review from the Notice of Case Action dated December 6, 2014. See Exhibit 1, pp. 3-4. The Department calculated a gross unearned income amount of [REDACTED] Exhibit 1, p. 4. This amount comprised of Claimant's [REDACTED] Supplemental Security Income (SSI) and [REDACTED] State SSI Payments (SSP) (issued quartly in the amount of [REDACTED]), which she did not dispute. See BEM 503 (July 2014), pp. 28-33 and Exhibit 1, p. 4.

Then, the Department properly applied the [REDACTED] standard deduction applicable to Claimant's group size of one. RFT 255 (October 2014), p. 1 and see Exhibit 1, p. 4. The Department also calculated Claimant's housing expenses to be [REDACTED] which she did not dispute. See Exhibit 1, p. 4.

Finally, the Department indicated that Claimant did not receive the mandatory heat and utility (h/u) standard in the amount of [REDACTED]. See Exhibit 1, p. 4. Instead, the Department provided Claimant with the non-heat electric standard of [REDACTED] and telephone standard of [REDACTED]. See Exhibit 1, p. 4. Claimant received the [REDACTED] h/u standard in the past; however, in December 2014, Claimant had a redetermination review in which the Department indicated Claimant was only responsible for non-heat electric and this resulted in a decrease of her FAP assistance. See Exhibit 1, pp. 1 and 6.

For groups with one or more SDV members, the Department uses excess shelter. See BEM 554 (October 2014), 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 [REDACTED] 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 [REDACTED] 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 her behalf in an amount greater than [REDACTED] 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 (██████████), if the client has no heating/cooling expense but has a responsibility to pay for non-heat electricity; the water and/or sewer standard (██████████) 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 (██████████) 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 (██████████), 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 (██████████) 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 ██████████ 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 his case. BEM 554, pp. 15 and 20.

In this case, Claimant testified to the following: (i) her gas/cooking fuel expenses is included in her rent; (ii) she has a heating expense separate from her rent because her townhouse unit shares a furnace; and (iii) she has a cooling expense separate from her rent because her townhouse unit has central air conditioning. In response, the Department argued that Claimant's gas is included in her rent and she is only responsible for her electric bill. The Department even provided proof of Claimant's responsibility to pay for only non-heat electricity. Therefore, the Department argued she is not eligible for the ██████████ h/u standard.

As stated above, 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. BEM 554, p. 16. Initially, it appears that Claimant would not be eligible for the mandatory h/u standard because her gas is included in her rent. See BEM 554, p. 16. However, Claimant testified that her townhouse unit shares a furnace. Moreover, Claimant appeared to indicate that if she uses her furnace, her electric expenses increase. As such, Claimant could possibly be eligible for the mandatory h/u standard if her heating expense is separate from rent, mortgage or condominium/maintenance payments. BEM 554, p. 16.

Moreover, Claimant can be eligible for the mandatory h/u standard if her cooling expenses are separate from her housing costs. 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. Claimant testified that she has cooling expenses separate from her rent because her townhouse unit has central air conditioning. Claimant testified that she uses her central air conditioning and

as a result, her non-heat electric expenses increase. The Department verifies non-heat electric at application, redetermination, or when a change is reported. BEM 554, p. 17. Acceptable verification sources include, but are not limited to current bills or a written statement from the provider for electric expenses, collateral contact with the electric provider, etc... See BEM 554, p. 17. The Department provided evidence that Claimant has non-heat electric expenses and her payment history. See Exhibit 1, pp. 7-8.

Based on the foregoing information, the Department failed to satisfy its burden of showing that it properly calculated Claimant's FAP benefits in accordance with Department policy. The evidence is unclear if Claimant's heating and/or cooling expenses are separate from her housing costs. See BEM 554, pp. 14-18. If such expenses are separate from her housing costs, she would be eligible for the mandatory h/u standard. As such, the Department will recalculate Claimant's FAP benefits and initiate verification of Claimant's eligibility for the mandatory heat and utility standard effective January 1, 2015, ongoing, in accordance with Department policy. See BEM 554, pp. 1-2 and 14-20 and RFT 255, p. 1. It should also be noted that the Department failed to provide any evidence that it sent Claimant a Verification Checklist (VCL) to see if she is eligible for the mandatory h/u standard (i.e., requesting proof of her heating and/or cooling expenses being separate from her housing costs). See BAM 130 (October 2014), pp. 1-9.

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 failed to satisfy its burden of showing that it properly calculated Claimant's FAP benefits effective January 1, 2015.

Accordingly, the Department's FAP 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. Recalculate Claimant's FAP benefits effective January 1, 2015, ongoing, in accordance with Department policy;
2. Initiate verification of Claimant's eligibility for the mandatory heat and utility standard;

3. Issue supplements to Claimant for any FAP benefits she was eligible to receive but did not from January 1, 2015, ongoing; and
4. Notify Claimant of its FAP decision in accordance with Department policy.


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

Date Signed: **2/25/2015**

Date Mailed: **2/26/2015**

EJF/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]