

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

IN THE MATTER OF:

██████████
██████████
██████████
██████████████████

Reg. No.: 14-019346
Issue No.: 3000; 3008
Case No.: ██████████
Hearing Date: February 25, 2015
County: OAKLAND-DISTRICT 3
(SOUTHFIELD)

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 ██████████ ██████████ Hearings Facilitator.

ISSUES

Did the Department properly determine Claimant's FAP group composition for December 1, 2014 to December 31, 2014?

Did the Department properly decrease Claimant's Food Assistance Program (FAP) allotment to ██████████ December 1, 2014 to December 31, 2014?

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's daughter was an ongoing recipient of FAP benefits for December 2014.
2. On September 24, 2014, Claimant attended a previous administrative hearing to dispute the closure of her Family Independence Program (FIP) benefits. See Exhibit A, pp. 21-25.
3. On October 3, 2014, the Administrative Law Judge (ALJ) sent both parties a decision that affirmed the Department's action of closing Claimant's FIP benefits

for three months due to a non-compliance. See Exhibit A, pp. 21-25. As a result, Claimant's FIP benefits were closed from November 1, 2014 to January 31, 2015 (three-month sanction).

4. On October 21, 2014, the Department sent Claimant a Notice of Case Action (case action) notifying her that her FAP benefits decreased to [REDACTED] effective December 1, 2014 to December 31, 2014 because her shelter deduction and net unearned income amounts had changed. See Exhibit 1, pp. 13-16. The case action also indicated the group size is one. See Exhibit 1, p. 13.
5. Effective November 1, 2014, ongoing, Claimant was also disqualified from her FAP benefits for one month or until compliance, whichever is longer, due to the non-compliance. See Exhibit 1, p. 18. This resulted in Claimant's FAP group size decreasing from two to one (only daughter) because of Claimant's disqualification.
6. On November 21, 2014, Claimant filed a hearing request, protesting the reduction of her FAP benefits. See Exhibit 1, p. 4.
7. On January 22, 2015, the Michigan Administrative Hearing System (MAHS) sent both parties a Notice of Hearing, which scheduled a hearing on February 2, 2015.
8. On February 2, 2015, Claimant submitted a request for adjournment.
9. On February 4, 2015, the ALJ sent both parties an Adjournment Order.
10. On February 10, 2015, MAHS sent both parties a Notice of Hearing, which rescheduled a hearing on February 25, 2015

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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Family Independence Agency) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101 to .3131.

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.

Preliminary matters

First, Claimant disputed the closure of her FAP benefits (daughter only) effective January 1, 2015. The FAP benefits closed effective January 1, 2015, due to allegedly Claimant's failure to submit a redetermination. However, this ALJ lacks the jurisdiction to address Claimant's dispute with the closure of the FAP benefits effective January 1, 2015, ongoing. See BAM 600 (October 2014 and January 2015), pp. 4-6.

MAHS may grant a hearing about any of the following:

- Denial of an application and/or supplemental payments.
- Reduction in the amount of program benefits or service.
- Suspension or termination of program benefits or service.
- Restrictions under which benefits or services are provided.
- Delay of any action beyond standards of promptness.
- For **FAP only**, the current level of benefits or denial of expedited service.

BAM 600, pp. 4-5.

A review of Claimant's hearing request dated November 21, 2014, found that she only disputed the reduction in FAP benefits. See Exhibit 1, p. 4. Nowhere in the hearing request did Claimant dispute the closure of FAP benefits. See Exhibit 1, p. 4. Furthermore, the Department presented another letter from the Claimant dated December 23, 2014. See Exhibit 1, p. 3. In this letter, Claimant addressed a Notice of Missed Interview, which stated that she must reschedule her interview before December 31, 2014, or her redetermination will be denied and her FAP benefits would close effective January 1, 2015, ongoing. See Exhibit 1, pp. 3 and 19. A review of Claimant's letter did not dispute any closure, but a request to reschedule her telephone interview. See Exhibit 1, p. 3. Claimant failed to submit a proper request for hearing to dispute the closure of her FAP benefits effective January 1, 2015, ongoing. Moreover, Claimant's hearing request is dated November 21, 2014 and, therefore, this ALJ will only review her dispute in that request. See Exhibit 1, p. 4. Thus, this ALJ will only address Claimant's dispute of her FAP decrease for the month of December 2014. See BAM 600, pp. 4-6 and Exhibit 1, p. 4. Claimant can file another hearing request to dispute the closure of her FAP benefits effective January 1, 2015, ongoing. See BAM 600, pp. 4-6.

Second, Claimant also argued that her FAP benefits must continue due to a timely hearing request. A timely hearing request is a request received by the department within 10 days of the date the notice of case action was issued. BAM 600, p. 23. While waiting for the hearing decision, recipients must continue to receive the assistance authorized prior to the notice of negative action when the request was filed timely. BAM

600, p. 23. Upon receipt of a timely hearing request, the Department reinstates program benefits to the former level for a hearing request filed because of a negative action. BAM 600, p. 23. **For FAP only**, these actions apply only if the benefit period has **not** expired. BAM 600, p. 23.

Based on the foregoing information, Claimant's hearing request (dated November 21, 2014), was not 10 days of the date of the notice of case action informing her that the FAP benefits decreased to \$69 (dated October 21, 2014). See Exhibit 1, pp. 5 and 13. As such, Claimant's FAP benefits would not be reinstated to the former level because the hearing request was not timely. See BAM 600, p. 23. Furthermore, Claimant argued that her FAP hearing request was timely regarding the closure of her FAP benefits. However, as stated above, this ALJ lacks the jurisdiction to address Claimant's FAP closure. It should be noted that for FAP only, these actions apply only if the benefit period has not expired. BAM 600, p. 23.

Third, on or around February 25, 2015, Claimant attempted to submit a post hearing correspondence, apparently pertaining to additional arguments subsequent to the hearing; however, the hearing record had closed and this additional correspondence cannot be reviewed or considered.

FAP group composition

On September 24, 2014, Claimant attended a previous administrative hearing to dispute the closure of her FIP benefits. See Exhibit A, pp. 21-25. On October 3, 2014, the ALJ sent both parties a decision that affirmed the Department's action of closing Claimant's FIP benefits for three months due to a non-compliance. See Exhibit A, pp. 21-25. As a result, Claimant's FIP benefits were closed from November 1, 2014 to January 31, 2015 (three-month sanction). Moreover, Claimant's FAP benefits were also affected by the non-compliance. On October 14, 2014, the Department sent Claimant a Notice of Non-compliance letter informing her that she would also be disqualified for one more or until compliance, whichever is longer for her FAP benefits. See Exhibit 1, pp. 17-18. Effective November 1, 2014, ongoing, the Department indicated that Claimant was disqualified from her FAP benefits. See Exhibit 1, p. 18. This resulted in Claimant's FAP group size decreasing from two to one (only daughter) because of Claimant's disqualification.

Michigan's FAP Employment and Training program is voluntary and penalties for noncompliance applies when the client is an active FIP/RCA and FAP and becomes noncompliant with a cash program requirement without good cause. BEM 233B (July 2013), p. 1. If a participant is active FIP and FAP at the time of FIP noncompliance, determination of FAP good cause is based on the FIP good cause reasons outlined in BEM 233A. BEM 233B, p. 2. For the FAP determination, if the client does not meet one of the FIP good cause reasons, determine the FAP disqualification based on FIP deferral criteria only as outlined in BEM 230A, or the FAP deferral reason of care of a

child under 6 or education. BEM 233B, p. 2. No other deferral reasons apply for participants active FIP and FAP. BEM 233B, p. 2.

In regards to member disqualification, for the first occurrence, the Department disqualifies the person for one month or until compliance, whichever is longer. BEM 233B, p. 6. For a second or subsequent occurrence, the Department disqualifies the person for six months or until compliance, whichever is longer. BEM 233B, p. 6.

Based on the foregoing information and evidence, the Department properly reduced Claimant's FAP benefits by excluding her as a disqualified member of the FAP group in accordance with Department policy. See BEM 233B, pp. 1-6. The previous administrative hearing found that Claimant was in non-compliance and resulted in her FIP benefits being closed. Policy indicates that Claimant is also disqualified from her FAP benefits and her FAP benefits are reinstated until she is in compliance. See BEM 233B, pp. 1-6. In this case, Claimant disputed the decrease in FAP benefits effective December 1, 2014 to December 31, 2014. As such, the Department properly calculated Claimant's group size to be one for December 2014, as she was still in non-compliance with the FAP program at that time.

FAP reduction

On October 21, 2014, the Department sent Claimant a Notice of Case Action (case action) notifying her that her FAP benefits decreased to [REDACTED] effective December 1, 2014 to December 31, 2014 because her shelter deduction and net unearned income amounts had changed. See Exhibit 1, pp. 13-16.

As stated above, the FAP certified group size is one (Claimant's daughter) and that Claimant's daughter is a senior/disabled/disabled veteran (SDV) member. The Department presented the December 2014 FAP budget for review from the Notice of Case Action dated October 21, 2014. See Exhibit 1, pp. 13-14.

The Department calculated a gross unearned income amount of \$ [REDACTED], which Claimant disputed. Exhibit A, pp. 3 and 10. The Department testified this amount was comprised of the daughter's [REDACTED] Supplemental Security Income (SSI) and the [REDACTED] FIP (cash) allotment. However, when these amounts are added together, the result is less than the [REDACTED] amount the Department had budgeted. See Exhibit 1, p. 14. The Department could not present testimony or evidence for this discrepancy. In response, Claimant testified that her daughter received [REDACTED] in SSI income and argued that the Department should not consider the FIP allotment if the benefits are closed due to the non-compliance.

The Department counts the gross amount of current Social Security Administration (SSA)-issued SSI as unearned income. BEM 503 (July 2014), p. 32.

For FAP only, FIP, RCA and SDA benefits are considered the unearned income of the FIP, RCA or SDA head of household (HOH, formerly grantee). BEM 503, p. 14. The

Department counts as unearned income, the amount of cash assistance benefits minus any excludable portion. BEM 503, p. 14. Some types of FIP and RCA penalties, require budgeting of cash assistance for FAP, even when not received. BEM 503, p. 15. Budgeting income for disqualified persons living with the FAP group differs based on the reason for the disqualification. BEM 550 (February 2014), p. 2. FIP and SDA benefits are considered the unearned income of the FIP/SDA head of household (HOH). BEM 550, p. 2. The Department budgets all earned and unearned income of a person disqualified for non-cooperation with employment related activities. BEM 550, p. 3.

Based on the above information, the Department failed to satisfy its burden of showing that it properly calculated Claimant's unearned income in accordance with Department policy. See BEM 503, p. 32. As stated above, the Department was unable to clarify the discrepancy in the calculation of the unearned income. As such, the Department will recalculate Claimant's FAP benefits for December 2014. It should be noted that the Department does budget Claimant's FIP grant even though she did not receive it based on the disqualification. See BEM 503, p. 14, BEM 550, pp. 2-3.

Next, the Department calculated Claimant's medical expenses (deduction) to be zero. Claimant testified that she and her daughter have medical expenses. Claimant testified her daughter's medical expenses are approximately █████ monthly. However, Claimant testified that she did not submit proof of medical expenses because she was unaware of such a deduction.

For groups with one or more SDV member, the Department allows medical expenses that exceed █████ 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 this information, the Department properly calculated Claimant's medical expense (deduction) to be zero. Claimant's testimony indicated that she did not notify the Department of any medical expenses nor did she present any evidence of medical expenses at the hearing. Therefore, the Department properly calculated Claimant's medical expense (deduction) to be zero in accordance with Department policy. See

BEM 554, p. 1 and 11. It should be noted only SDV members are eligible for the medical expense deduction, which would be only be Claimant's daughter. See BEM 554, p. 1 and 8.

The Department then indicated that Claimant's housing costs were ██████ for December 2014, which she disputed. See Exhibit 1, p. 14. Claimant testified that her housing costs were ██████ See Exhibit A, pp. 8-9 (lease agreement). Claimant testified that she mailed the notice and/or verification of her shelter expenses with her redetermination to the Department on or around November 21, 2014.

For groups with one or more SDV member, the Department uses excess shelter deduction. See BEM 554, p. 1. The Department allows a shelter expense when the FAP group has a shelter expense or contributes to the shelter expense. BEM 554, p. 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. BEM 554, pp. 12-13. The Department verifies shelter expenses at application and when a change is reported. BEM 554, p. 14. If the client fails to verify a reported change in shelter, the Department removes the old expense until the new expense is verified. BEM 554, p. 14. The Department verifies the expense and the amount for housing expenses, property taxes, assessments, insurance and home repairs. BEM 554, p. 14.

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 address and shelter cost changes that result from the move. BAM105 , p. 10. For FAP only, the Department acts on a change reported by means other than a tape match within 10 days of becoming aware of the change. BAM 220 (October 2014), p. 6. Changes which result in an increase in the household's benefits must be effective no later than the first allotment issued 10 days after the date the change was reported, provided any necessary verification was returned by the due date. BAM 220, p. 6.

Based on the above information, the Department properly calculated Claimant's housing costs to be ██████ for December 2014, in accordance with Department policy. January's 2015 benefits will be the first month affected by the housing costs because the 10th day after the change is reported falls in the next benefit period. See BAM 220, pp. 6-7. As such, Claimant's December 2014 benefits continued to budget her housing costs of ██████ See BAM 220, pp. 6-7.

Finally, the Department gave Claimant the flat utility standard to all clients responsible for utility bills. BEM 554, pp. 15-16. The utility standard of ██████(see RFT 255, p. 1.) encompasses all utilities (water, gas, electric, telephone) and is unchanged even if a client's monthly utility expenses exceed the ██████ amount. Nevertheless, the

Department did not properly calculate Claimant's unearned income; therefore, the Department will recalculate her FAP benefits for the month of December 2014.


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 determined that Claimant's FAP group composition is one (only daughter) for December 1, 2014 to December 31, 2014; (ii) failed to satisfy its burden of showing that it acted in accordance with Department policy when it calculated Claimant's FAP benefits for December 1, 2014 to December 31, 2014; and (iii) this ALJ lacks the jurisdiction to address Claimant's FAP closure effective January 1, 2015, ongoing.

Accordingly, the Department's FAP decision is AFFIRMED IN PART with respect to group composition for December 2014 and lack of jurisdiction for case closure effective January 1, 2015 and REVERSED IN PART with respect to calculation of benefits for December 2014.

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, to December 31, 2014, in accordance with Department policy;
2. Issue supplements to Claimant for any FAP benefits she was eligible to receive but did not from December 1, 2014 to December 31, 2014; and
3. 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: **2/27/2015**
Date Mailed: **2/27/2015**

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]