

**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.: 14-017417
Issue No.: 3008
Case No.: ██████████
Hearing Date: January 8, 2015
County: WAYNE-DISTRICT 19
(INKSTER)

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 January 8, 2015, from Detroit, Michigan. Participants on behalf of Claimant included Claimant, ██████████. Participants on behalf of the Department of Human Services (Department) included ██████████, Eligibility Specialist; and ██████████, Family Independence Manager.

ISSUE

Did the Department properly decrease Claimant's Food Assistance Program (FAP) allotment to the amount of \$16 effective December 1, 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 is an ongoing recipient of FAP benefits.
2. Claimant was an ongoing recipient of the mandatory heat/utility (h/u) standard. See Exhibit 1, p. 4.
3. On or around November 2014, Claimant submitted a redetermination.
4. On or around November 15, 2014, Claimant and the Department conducted a FAP redetermination telephone interview.
5. On November 15, 2014, the Department sent Claimant a Notice of Case Action notifying him that his FAP benefits decreased to \$16 effective December 1, 2014

because his shelter deduction amount has changed. See Exhibit 1, pp. 10-11. The Notice of Case Action further indicated that Claimant's housing costs were \$550 and he was not eligible for the h/u standard. See Exhibit 1, p. 11.

6. On November 24, 2014, Claimant submitted a shelter verification, which indicated his rent increased to \$675. See Exhibit 1, p. 8. The Department applied the reported change in shelter expenses to the benefit month of December 2014, ongoing. See Exhibit 1, p. 5
7. On December 4, 2014, Claimant filed a hearing request, protesting his FAP allotment. See Exhibit 1, pp. 2-3.

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 December 2014 FAP budget for review. See Exhibit 1, p. 6. The Department calculated a gross unearned income amount of \$1,126. Exhibit 1, p. 6. This amount comprised of Claimant's Social Security Administration benefits, which he did not dispute. See BEM 503 (July 2014), pp. 28-33 and Exhibit 1, pp. 12-14.

Then, the Department properly applied the \$154 standard deduction applicable to Claimant's group size of one. See RFT 255 (October 2014), p. 1 and see Exhibit 1, p. 6.

The Department also presented Claimant's FAP – Excess Shelter Deduction budget (shelter budget) for December 2014. See Exhibit 1, p. 5. The shelter budget reflected Claimant's increase in housing expenses to the amount of \$675 because he provided the shelter verification on November 24, 2014. See Exhibit 1, pp. 5 and 8. Claimant did not dispute the calculation of his housing expenses.

Additionally, the shelter budget indicated that Claimant did not receive the mandatory h/u standard. See Exhibit 1, p. 5. In fact, the shelter budget indicated that Claimant did

not receive any additional shelter deductions other than the housing expenses. See Exhibit 1, p. 5.

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 \$553 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 \$20 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 his behalf in an amount greater than \$20 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, 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 (\$124 as of October 1, 2014) if the client has no heating/cooling expense but has a responsibility to pay for non-heat electricity; the water and/or sewer standard (currently \$77) 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 (currently \$34) 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 (currently \$47) 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 (currently \$21) 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 \$553 mandatory h/u, that is all the client is eligible for. If he is not eligible for the mandatory h/u, he gets the sum of the other utility standards that apply to his case. BEM 554, pp. 15 and 20.

On or around November 2014, Claimant submitted his redetermination. The Department testified that Claimant did not notate any heat or utility expenses in the redetermination nor did it appear that he provided any verification of such expenses with the redetermination. Claimant testified that he believed the Department already had verification of the heat and utility expenses; therefore, he indicated no changes in the redetermination. Claimant, though, testified that he believed he provided verification of his heat and utility bills with the redetermination in November 2014.

On or around November 15, 2014, Claimant and the Department conducted a FAP redetermination telephone interview. The Department testified that Claimant only notified it that his shelter expenses had increased. However, the Department testified that Claimant mentioned that he did not pay for his heat and utility expenses. Claimant could not recall if he notified the Department that he paid for heat and utility expenses.

In early December 2014, Claimant and the Department spoke once again regarding his FAP benefits. At this point, the Department testified that it first discovered that Claimant was responsible for heat and utility expenses. However, the Department testified that the heat and utility bills were in his girlfriend's name that is now deceased. Claimant did not dispute that he had this conversation with the Department in early December 2014.

Late December 2014 or in early January 2014, Claimant provided the following documentation to the Department: (i) a heat utility bill with someone else's name and with the same service address as Claimant's residence; (ii) an electric bill with someone else's name and with the same service address as Claimant's residence; and (iii) Claimant's girlfriend death certificate. See Exhibit A, pp. 1-3. The Department argued that it did not accept the verification because Claimant's name is not on the heat and utility bills.

Finally, Claimant testified that he did receive the Home Heating Credit (HHC) at the end of the year with his state income tax and that he does have telephone expenses (though he provided telephone expenses with redetermination). Claimant also testified that he does have central air conditioning, which he is responsible for in the electric bill. The Department testified that it did not send Claimant a Verification Checklist (VLC) requesting verification of his heat and utility expenses.

An expense is allowed if all of the following: (i) the service is provided by someone outside of the FAP group; (ii) someone in the FAP group has the responsibility to pay for the service in money; and (iii) verification is provided, if required. BEM 554, p. 1.

Responsibility to pay means that the expense is in the name of a person in the FAP group. BEM 554, p. 2. Except, if the expense is in someone else's name, allow the expense if the FAP group claims the expense and the service address on the bill is where they live. BEM 554, p. 2.

Based on the foregoing information, the Department improperly calculated Claimant's mandatory h/u standard in accordance with Department policy.

First, the evidence presented that Claimant claims that he is responsible to pay for the heat and utility expenses and the service address on the bills are where he lives. See Exhibit A, pp. 1-2. As such, the Department must allow the heat and utility expenses as Claimant met the allowable expenses exception requirement per BEM 554. See BEM 554, pp. 1-2.

Second, Claimant presented evidence that he has a heating expense that is separate from his rent. See Exhibit A, p. 1. Claimant also testified that he does have central air conditioning, for which he is responsible to pay, in the electric bill. Claimant provided proof of his responsibility to pay for the heat and non-heat electricity. See Exhibit A, pp. 1-2. Finally, Claimant appeared to indicate that he also received that HHC in an amount greater than \$20. Nevertheless, the evidence indicated that Claimant is eligible for the mandatory h/u standard based on his heating being separate from housing costs and his cooling being separate from housing costs. See BEM 554, pp. 14-18. As such, the Department will recalculate Claimant's FAP benefits and apply the mandatory h/u standard for his benefits effective December 1, 2014, ongoing, in accordance with Department policy. See BEM 554, pp. 1-2 and 14-20 and RFT 255, p. 1.


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 did not act in accordance with Department policy when it improperly calculated Claimant's FAP benefits effective December 1, 2014.

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 and apply the mandatory h/u standard for Claimant's FAP benefits effective December 1, 2014, ongoing, in accordance with Department policy;
2. Issue supplements to Claimant for December 1, 2014, ongoing; 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: **1/13/2015**

Date Mailed: **1/13/2015**

EJF / cl

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]
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