

**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.: 14-017959
Issue No.: 3008
Case No.: ██████████
Hearing Date: January 12, 2015
County: Wayne-District 18

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 12, 2015, from Detroit, Michigan. Participants on behalf of Claimant included Claimant and ██████████, Claimant's husband. Participants on behalf of the Department of Human Services (Department) included ██████████, Hearing Facilitator/Eligibility Specialist.

ISSUE

Did the Department properly calculate Claimant's monthly Food Assistance Program (FAP) allotment for December 1, 2014 ongoing?

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 connection with a Semi-Annual Contact Report Claimant submitted to the Department on October 8, 2014, the Department recalculated Claimant's FAP eligibility.
3. On November 24, 2014, the Department sent Claimant a Notice of Case Action notifying her that effective December 1, 2014, her monthly FAP allotment was \$670.
4. On December 1, 2014, Claimant filed a request for hearing disputing the Department's calculation of her FAP benefits.

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.

Claimant requested a hearing to dispute the Department's calculation of her FAP benefits for December 1, 2014 ongoing. A copy of the net income budget used by the Department in calculating Claimant's FAP benefits was reviewed with Claimant and her husband at the hearing.

The budget was based on FAP group of seven: Claimant, her husband, their daughters [REDACTED] and [REDACTED], their sons [REDACTED] and [REDACTED], and their grandson [REDACTED] ([REDACTED] child). Although there was some discussion at the hearing, and evidence presented by the Department, concerning the fact that [REDACTED] was a full-time student in college or vocational school in 2013, Claimant's husband testified that [REDACTED] was not a student in Fall 2014 or at the time of the hearing and he had advised the Department of this fact in August 2014. It is further noted that [REDACTED] was the mother of a young child. The parent who provides more than half of the physical care of a group member under the age of six is not an ineligible student for FAP receipt. BEM 245 (July 2014), p. 5. Because [REDACTED] was not in school and, even if she was, she was the mother of a child under [REDACTED] [REDACTED] was not in an ineligible student for FAP purposes. Therefore, she was properly included in the FAP group.

The SOLQ reports, which show the household's Social Security benefits, established that, in December 2014, Claimant's husband received \$1655 in Retirement, Survivors and Disability Insurance (RSDI) income, Claimant received \$276 in RSDI income, their son [REDACTED] received \$276 in RSDI income, and their son [REDACTED] received \$276 in RSDI income. The sum of these amounts is \$2483, consistent with the amount shown on the budget.

The deductions to income were also reviewed. Because Claimant's husband receives RSDI income based on a disability, which the Department confirmed, he is a senior/disabled/veteran (SDV) member of the FAP group. See BEM 550 (February 2014), pp 1-2. For groups with one or more SDV members, the following deductions are available from the group's total income:

- Standard deduction.
- Dependent care expense.
- Excess shelter.
- Court ordered child support and arrearages paid to non-household members.
- Medical expenses for the SDV member(s) that exceed \$35.

BEM 554 (October 2014), p. 1.

Based on Claimant's seven-person FAP group, Claimant was eligible for a \$220 standard deduction. RFT (October 2014), p. 1. Although the budget showed a deduction for day care expenses and day care receipts from 2013 were included in the record, Claimant confirmed at the hearing that there were no continuing day care expenses as of August 2014. Therefore, the budget improperly included a day care deduction.

Verified, out-of-pocket medical expenses exceeding \$35 of the SDV members in the FAP group are deductible in a FAP budget. BEM 554, pp. 1, 8. Claimant's FAP budget showed no medical expenses. However, the record included medical expense receipts exceeding \$600 that Claimant submitted to the Department on October 8, 2014, the same day she submitted her Semi-Annual Contact Report. Claimant's husband testified that the receipts are for prescription drugs for him and his wife and are ongoing, monthly expenses. The Department is required to estimate an SDV person's medical expenses for the benefit period based on (i) verified allowable medical expenses for the SDV member, (ii) available information about the SDV member's medical condition and health insurance, and (iii) changes that can reasonably be anticipated to occur during the benefit period. Because Claimant presented medical expenses relating to an SDV member of the FAP group, the Department did not act in accordance with Department policy when it failed to consider those expenses in determining Claimant's eligibility for a medical expense deduction.

Claimant was also eligible for an excess shelter deduction in the FAP budget. The excess shelter deduction takes into consideration Claimant's monthly shelter expenses and the applicable utility expense. In this case, Claimant is responsible for heating and cooling expenses and received the mandatory heat and utility standard of \$553, the most beneficial utility standard applicable in a FAP case. BEM 554, pp. 1, 8-19; RFT 255, p. 1. Although the Department properly considered Claimant's monthly land contract expense, property taxes and home owner's insurance premium, the amount it calculated for shelter expenses, as shown on the excess shelter deduction budget, is slightly more than the sum of the expenses. Although the calculation for shelter expenses based on the evidence presented is slightly less than the \$1428 as shown on the excess shelter deduction budget, even with the corrected shelter expense amount, Claimant was eligible for an excess shelter deduction over \$1000. However, the Department limited the excess shelter deduction to \$490, the limit where there are no

SDV members in the household. Because Claimant's husband is an SDV member, Claimant was eligible for the full excess shelter deduction and the Department erred when it limited this deduction to \$490. BEM 554, p. 1.

Because the Department erred in calculating Claimant's deductions in her FAP budget by (i) including day care expenses, (ii) excluding medical expenses, and (iii) limiting the excess shelter deduction, the Department did not act in accordance with Department policy when it calculated Claimant's monthly FAP benefits for December 1, 2014 ongoing.

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. Recalculate Claimant's FAP budget for December 1, 2014 ongoing; and
2. Issue supplements to Claimant for any FAP benefits she was eligible to receive but did not receive from December 1, 2014 ongoing.



Alice C. Elkin
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **1/16/2015**

Date Mailed: **1/16/2015**

ACE / tlf

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]