

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-017980
Issue No.: FOOD ASSISTANCE PROGRAM
Case No.: [REDACTED]
Hearing Date: January 15, 2015
County: GLADWIN

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 15, 2015, from Lansing, Michigan. Participants on behalf of Claimant included Kimberly Rhoten, the Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED] Hearing Coordinator, 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. An April 2, 2014, Shelter Verification, in part, indicated heating/cooling was included in Claimant's monthly rent.
2. On May 20, 2014, a case change was processed to include out of pocket prescription expenses in the FAP budget.
3. On May 20, 2014, a Notice of Case Action was issued to Claimant stating she was approved for a monthly allotment of \$ [REDACTED].
4. Claimant continued to receive the full heat/utility standard in the FAP budget for five months after the last case change.
5. On November 15, 2014, a Notice of Case Action was issued to Claimant the FAP monthly allotment would decrease to \$ [REDACTED] effective December 1, 2014.
6. On December 4, 2014, Claimant orally requested a hearing contesting the Department's action.

7. Claimant subsequently provided verification from her landlord that she pays separately for electric and air conditioning.
8. The Department re-calculated Claimant's FAP budget to include the utility expenses.

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. 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. A shelter expense is allowed when the FAP group has a shelter expense or contributes to the shelter expense. 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. 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. A FAP group which has no heating/cooling expense but has a responsibility to pay for non-heat electricity separate from rent/mort-gage or condo/maintenance fees, must use the non-heat electric standard. The standard covers only non-heat electric. BEM 554.

Delayed Implementation of Changes Due to Agricultural Act of 2014 (End of the Dollar LIHEAP Program) For all FAP groups that received the h/u standard on or before February 7, 2014, the h/u standard will remain in place for a period of five months after the month of their first redetermination or first reported case change occurring on or after May 1, 2014. In order to continue receiving the h/u standard beyond the expiration of the five month period, the FAP group must meet the requirements of the MANDATORY HEAT AND UTILITY STANDARD section. BEM 554.

Prior to the May 20, 2014, case action, Claimant had automatically qualified for the h/u standard. However, the Department's policy has changed. As noted above, effective May 1, 2014, when processing applications, redeterminations, or when a change is reported clients are not automatically allowed the h/u standard.

The evidence documents that the Department properly followed the FAP policy to determine Claimant's monthly allotment based on the available information as verification of utility expenses was submitted. When the May 2014 change regarding medical expenses was processed, a current shelter verification documented, in part, that heating/cooling was included in Claimant's monthly rent. Accordingly, Claimant no longer qualified for the full h/u standard. However, the full h/u standard was utilized for the five months after this change was processed under the delayed implementation policy. Therefore, the November 15, 2014, a Notice of Case Action issued to Claimant stating the FAP monthly allotment would decrease to \$█ effective December 1, 2014, was appropriate at the time it was issued. Claimant was then beyond the additional 5 month time period for delayed implementation regarding the full h/u standard.

The Department testified that Claimant's FAP benefits were restored pending the outcome of this hearing based on her timely hearing request.

The evidence further documents that Claimant subsequently provided a December 2, 2014, verification from her landlord stating that Claimant pays separately for electric and air conditioning. Accordingly, the Department re-calculated Claimant's FAP budget to include the full h/u standard and testified that Claimant's FAP monthly allotment has increased to \$█. Again, the evidence shows that the Department properly re-determined Claimant's FAP monthly allotment based on the available verification of heat/cooling utility expenses when it was received.

There was also discussion that a decrease in the FAP allotment is expected to occur in February 2015 based on an increase in Claimant's SSI income. While this future action is beyond the timeframe that can be reviewed for Claimant's December 4, 2014, hearing request, it again appears the Department is properly re-calculating the FAP budget based on the current verification of Claimant's income.

Claimant testified that she just wanted to ensure she is getting the maximum FAP allotment she is eligible for.

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 acted in accordance with Department policy when it determined Claimant's FAP monthly allotment.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.

Colleen Lack

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

Date Signed: **1/21/2015**

Date Mailed: **1/21/2015**

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:

