

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

IN THE MATTER OF:

██████████
██████████
██████████

Reg. No.: 15-001396
Issue No.: 3008
Case No.: ██████████
Hearing Date: March 02, 2015
County: WAYNE-DISTRICT 57
(CONNER)

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 March 2, 2015, from Detroit, Michigan. Participants on behalf of Claimant included ██████████; and Claimant's Authorized Hearing Representative (AHR), ██████████, ██████████
██████████ Participants on behalf of the Department of Human Services (Department or DHS) included ██████████ Family Independence Manager; and ██████████, Eligibility Specialist.

ISSUE

Did the Department properly decrease Claimant's Food Assistance Program (FAP) allotment effective February 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. On January 8, 2015, the Department sent Claimant a Notice of Case Action (case action) notifying him that his FAP benefits decreased to ██████████ effective February 1, 2015, ongoing because his shelter deduction amount has changed. See Exhibit 1, pp. 3-4.
3. On January 23, 2015, Claimant/AHR filed a hearing request, protesting the FAP allotment. See Exhibit 1, p. 2.

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.

As a preliminary matter, on or around February 3, 2015, the Department sent Claimant a case action notifying him that his FAP benefits would be reduced to \$16 effective March 1, 2015, ongoing. This Administrative Law Judge (ALJ) lacks the jurisdiction to address Claimant's further decrease in benefits for March 2015 because it occurred after Claimant's hearing request. See BAM 600 (January 2015), pp. 4-6. Claimant can file another hearing request to dispute the March 2015 FAP allotment. See BAM 600, pp. 4-6.

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 February 2015 FAP budget for review. See Exhibit 1, pp. 5-6.

The Department calculated a gross unearned income amount of [REDACTED]. See Exhibit 1, p. 5. This amount comprised of Claimant's Retirement, Survivors and Disability Insurance (RSDI), which the AHR did not dispute. See BEM 503 (July 2014), pp. 28-33. The Department also properly applied the [REDACTED] standard deduction applicable to Claimant's group size of one. See RFT 255 (October 2014), p. 1 and Exhibit 1, p. 5.

Then, the Department also provided Claimant with a medical expense (deduction) in the amount of [REDACTED], which the AHR did not dispute. See Exhibit 1, p. 5. For groups with one or more SDV member, the Department allows medical expenses that exceed \$[REDACTED]. See BEM 554 (October 2014), p. 1. This amount comprised of Claimant's Medicare Part B premium of approximately [REDACTED] (rounded-up). Thus, Claimant's medical deduction is \$70 ([REDACTED] Medicare premium (rounded-up) minus [REDACTED] exclusion).

Next, the Department presented Claimant's Excess Shelter Deduction budget (shelter budget). See Exhibit 1, p. 7. The shelter budget indicated Claimant's housing expenses were [REDACTED] which the AHR did not dispute. However, Claimant's budget indicated that he was not receiving the [REDACTED] heat and utility (h/u) standard. See Exhibit 1, p. 7. The budget showed that Claimant receives the non-heat electric standard of [REDACTED] and telephone standard of [REDACTED]. RFT 255, p. 1 and see Exhibit 1, p. 7.

For groups with one or more SDV members, the Department uses excess shelter. See BEM 554, 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 his behalf in an amount greater than [REDACTED] 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 (\$[REDACTED] 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 [REDACTED]) 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 [REDACTED]) 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 [REDACTED]) 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 [REDACTED]) 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 [REDACTED] 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 her case. BEM 554, pp. 15 and 20.

In this case, Claimant received the h/u standard in the past; however, the Department indicated that Claimant failed to provide the necessary verifications (with the redetermination) to make him eligible for the mandatory h/u standard. As a result, Claimant's FAP benefits were reduced effective February 1, 2014. See Exhibit 1, pp. 3-7.

Before receiving the redetermination, Claimant's AHR testified that he provided proof of heat and electric expenses to the Department. The AHR could not recall a specific date, but based on this testimony, it appeared that the Department requested some form of verification to see if Claimant was eligible for the mandatory [REDACTED] h/u standard. Moreover, the AHR argued that upon receipt of the redetermination, Claimant indicated no changes (in the shelter expenses) as they thought the Department already had the previous verification. The Department failed to provide any evidence if a VCL was sent either before after the redetermination requesting proof of his h/u expenses.

In February 2014, both parties acknowledged that Claimant submitted verification of his lease agreement verifying his responsibility to pay for heating separate from housing costs. The Department testified that Claimant submitted the necessary verifications and would recalculate the FAP budget effective February 1, 2015, ongoing.

Finally, the Department tells the client what verification is required, how to obtain it, and the due date. BAM 130 (October 2014), p. 3. The Department uses the DHS-3503, Verification Checklist (VCL), to request verification. BAM 130, p. 3. For redeterminations, verifications must be provided by the end of the current benefit period or within 10 days after they are requested, whichever allows more time. BAM 210 (July 2014), p. 14 and see also BAM 130, p. 6 (allow the client 10 calendar days (or other time limit specified in policy) to provide the verification that is requested). However, for redeterminations, the DHS-3503, Verification Checklist, should be sent after the redetermination interview for any missing verifications allowing 10 days for their return. BAM 210, p. 14. Also, the Department verifies heating separate from housing costs at application, redetermination, or when a change is reported. BEM 554, p. 16.

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

First, the AHR provided a reasonable argument that Claimant indicated no changes for the shelter expense section as they thought the Department already had the necessary verifications.

Second, the Department testified that it and/or the federal government have been requesting the verification (heating obligation) since May of 2014. However, the Department failed to provide any evidence if a VCL was sent requesting proof of his h/u expenses. Policy states that the Department verifies heating separate from housing costs at application, redetermination, or when a change is reported. BEM 554, p. 16. The Department failed to provide any evidence that it sent Claimant a VCL in which it requested proof of his h/u expenses either before or even after the redetermination. See BAM 130, p. 3 and 6; BAM 210, p. 14; and BEM 554, p. 16. In fact, Claimant's AHR testimony appeared to indicate that he did respond to a VCL request for h/u expenses and the Department testified it had no record of it, but stated it does not mean that the Department did not receive it. Because Claimant already provided proof of his lease agreement showing that his heating expense is separate from the housing costs, the Department will apply Claimant's [REDACTED] h/u standard effective February 1, 2015, in accordance with Department policy. See BEM 554, pp. 1 and 14-20 and RFT 255, p. 1.

It should be noted that Claimant's heat and/or electric bill was not in the Claimant's name, but was in the AHR's employer's name. Responsibility to pay means that the expense is in the name of a person in the FAP group. BEM 554, p. 2. Exception, if the expense is in someone else's name, the Department allows the expense if the FAP group claims the expense and the service address on the bill is where they live. BEM 554, p. 2. The AHR's testimony indicated that Claimant met the above exception. As such, Claimant is responsible to pay for the heat and/or utility expenses in accordance with Department policy. BEM 554, p. 2.

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 February 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. Begin recalculating the FAP budget for February 1, 2014, in accordance with Department policy;
2. Apply Claimant's [REDACTED] mandatory h/u standard effective February 1, 2014, in accordance with Department policy;

3. Issue supplements to Claimant for any FAP benefits he was eligible to receive but did not from February 1, 2014; and
4. Notify Claimant/AHR 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: **3/3/2015**

Date Mailed: **3/3/2015**

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]