

**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.: 15-002892
Issue No.: 3008
Case No.: ██████████
Hearing Date: March 26, 2015
County: MACOMB-DISTRICT 12
(MT CLEMENS)

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 26, 2015, from Detroit, Michigan. Participants on behalf of Claimant included Claimant, ██████████; Claimant's spouse, ██████████; and Claimant's interpreter/son, ██████████. Participants on behalf of the Department of Human Services (Department or DHS) included ██████████, Hearings Facilitator.

ISSUE

Did the Department properly reduced Claimant's Food Assistance Program (FAP) allotment effective February 1, 2015, 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. See Exhibit 1, pp. 32-34.
2. Claimant's FAP benefits reduced from ██████████ for January 2015 to \$175 for February 2015. See Exhibit 1, pp. 33-34.
3. On January 7, 2015, a change in rent expenses was reported to the Department from ██████████. See Exhibit 1, pp. 23 and 41.

4. On January 8, 2015, the Department sent Claimant a Verification Checklist (VCL) and Shelter Verification, which requested verification of his home rent. See Exhibit 1, pp. 4-7. The verification was due back by January 20, 2015. See Exhibit 1, pp. 4-7.
5. On January 20, 2015, Claimant submitted verification of his home rent, which indicated his total monthly shelter obligation was [REDACTED]. See Exhibit 1, p. 6. The Shelter Verification also indicated that his water/sewer, cooking fuel, trash removal, and heating/cooling (only circled "heating") were included in his rent. See Exhibit 1, p. 6.
6. Effective February 1, 2015 to February 28, 2015, the Department removed Claimant's mandatory and heat and utility (h/u) standard of [REDACTED] and instead, provided him with the non-heat electricity standard for [REDACTED]. See Exhibit 1, p. 12. Claimant's housing costs was [REDACTED] however, the Department acknowledged that Claimant's housing costs should have been [REDACTED]. See Exhibit 1, p. 12.
7. On February 23, 2015, the Department sent Claimant a Notice of Case Action notifying him that his FAP benefits increased to \$194 effective March 1, 2015, ongoing. See Exhibit 1, pp. 1-3. The March 2015 budget indicated that following: Claimant's housing costs were [REDACTED] he received the non-heat electricity standard of \$[REDACTED]; and the telephone standard of [REDACTED]. See Exhibit 1, p. 2.
8. On February 23, 2015, Claimant filed a hearing request, protesting the reduction in his FAP benefits. See Exhibit 1, pp. 42-43.
9. On March 10, 2015, the Michigan Administrative Hearing System (MAHS) sent both parties a Notice of Hearing, which scheduled a hearing for March 26, 2015.
10. On or around March 16, 2015, the MAHS received a Hearing Request Withdrawal.
11. On March 20, 2015, the Administrative Law Judge (ALJ) sent both parties an Order Denying Hearing Request Withdrawal and indicated that the hearing will proceed as scheduled on March 26, 2015.
12. On March 26, 2015, all parties were present for the hearing.

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.

Preliminary matters

First, Claimant originally indicated that his other son would be his Authorized Hearing Representative (AHR). See Exhibit 1, pp. 42-43. However, Claimant's AHR was not present for the hearing. As such, Claimant acknowledged during the hearing that he wanted to proceed with the hearing without his AHR present.

Second, Claimant disputed the decrease in his FAP benefits effective February 1, 2015. However, on the same day of Claimant's hearing request, the Department also generated a Notice of Case Action informing him that his FAP benefits increased to [REDACTED] effective March 1, 2015, ongoing. See Exhibit 1, p. 1. Claimant also disputed his FAP allotment for March 2015. Based on the above information, this ALJ will review Claimant's FAP allotment for the benefit periods of February 2015 and March 2015. See BAM 600 (January 2015), pp. 4-6.

February 2015

It was not disputed that the certified group size is two and that Claimant and his spouse were senior/disabled/disabled veteran (SDV) members. The Department presented the February 2015 FAP budget for review. See Exhibit 1, pp. 10-11.

The Department calculated a gross unearned income amount of [REDACTED]. See Exhibit 1, p. 10. The Department testified this amount comprised of Claimant's [REDACTED] Supplemental Security Income (SSI), his spouse's [REDACTED] SSI income, and both receiving quarterly State SSI Payment (SSP - a total of [REDACTED] quarterly check divided by three) benefits. See BEM 503 (July 2014), pp. 28-33; RFT 248 (January 2015), pp. 1-3; and Exhibit 1, p. 10.

Claimant/witness did not dispute the SSI payments; however, argued the Claimant/spouse did not receive any SSP payments. The Department indicated that its consolidated inquiry system showed each group member receiving quarterly SSP payments. However, the Department failed to present any evidence of such a disbursement as part of the original hearing packet. Therefore, 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, pp. 28-33 and RFT 248, pp. 1-3.

Then, the Department properly applied the \$154 standard deduction applicable to Claimant's group size of two. See RFT 255 (October 2014), p. 1 and see Exhibit 1, p. 10.

Next, Claimant's FAP – Excess Shelter Deduction budget (shelter budget) indicated that Claimant's housing costs were \$ [REDACTED]. See Exhibit 1, p. 12. However, the Department acknowledged that it erred in this calculation and that his housing costs should be [REDACTED] effective February 1, 2015. As such, the Department will apply Claimant's housing costs as [REDACTED] effective February 1, 2015, ongoing. See 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).

Moreover, Claimant's budget indicated that he was no longer receiving the [REDACTED] h/u standard. See Exhibit 1, p. 12. Instead, the FAP budget indicates that Claimant received the non-heat electric standard for \$ [REDACTED] RFT 255, p. 1 and see Exhibit 1, p. 12. It should be noted that the Department again acknowledged that Claimant should have received the telephone standard as well. It should also be noted that Claimant no longer receiving the [REDACTED] h/u standard is the major reason why his FAP benefits decreased for February 2015, ongoing.

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 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/son provided credible testimony that Claimant's cooling expenses are separate from his housing costs. To support Claimant's credibility, on January 20, 2015, he submitted a Shelter Verification that indicated his heating/cooling (only circled "heating") were included in his rent. See Exhibit 1, p. 6. It is reasonable to infer that the Claimant and/or his son only circled the heating because that was the only expense that was included in the rent and not the cooling. If it is found that Claimant's cooling expenses are separate from his housing costs, then the Claimant would be eligible for the \$553 mandatory h/u standard. See BEM 554, pp. 14-17. As stated above, policy requires that verification is necessary when FAP groups who pay for cooling are eligible for the h/u standard. See BEM 554, p. 17. It should be noted that the Department was aware of Claimant's electricity expense at least dating back to August 2014, which would indicate possible cooling expenses. See Exhibit 1, pp. 24-31 (shelter verification and redetermination). Nevertheless, the Department is already ordered to recalculate Claimant's FAP benefits due to the unearned income; therefore, the Department will also redetermine Claimant's eligibility for the mandatory \$553 h/u standard effective February 1, 2015, ongoing, in accordance with Department policy. See BAM 105 (January 2015), pp. 10-11; BAM 220, pp. 6-7; and BEM 554, pp. 14-17.

March 2015

It was not disputed that the certified group size is two and that Claimant and his spouse were SDV members. The Department presented the March 2015 FAP budget for review from the Notice of Case Action dated February 23, 2015. See Exhibit 1, pp. 1-2

Again, the Department calculated a gross unearned income amount of \$ [REDACTED]. See Exhibit 1, p. 2. However, as stated in the above analysis, 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, pp. 28-33 and RFT 248, pp. 1-3.

Then, the Department properly applied the [REDACTED] standard deduction applicable to Claimant's group size of two. See RFT 255, p. 1 and see Exhibit 1, p. 5. Additionally, Claimant's budget properly indicated that the housing costs were \$750. See Exhibit 1, p. 2.

Finally, the budget indicated that Claimant received the non-heat electricity standard of [REDACTED] and the telephone standard of \$34. See Exhibit 1, p. 2. However, as stated in the previous analysis, the Department will redetermine Claimant's eligibility for the mandatory \$553 h/u standard. This would also include redetermining Claimant's eligibility for the mandatory \$553 h/u standard for March 1, 2015, ongoing, in accordance with Department policy. See BAM 105, pp. 10-11; BAM 220, pp. 6-7; and BEM 554, pp. 14-17.

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, ongoing.

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, 2015, ongoing, including the FAP group's unearned income and the FAP group's eligibility for the mandatory h/u standard, in accordance with Department policy;
2. Apply Claimant's housing costs to be [REDACTED] effective February 1, 2015, ongoing;

3. Issue FAP supplements to Claimant effective February 1, 2015, ongoing;
and
4. Notify Claimant of its FAP decision.


Eric Feldman
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **3/26/2015**

Date Mailed: **3/26/2015**

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]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]