

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

IN THE MATTER OF:

██████████
██████████
██████████

Reg. No.: 15-002838
Issue No.: 2000; 3008; 5008; 6004
Case No.: ██████████
Hearing Date: April 01, 2015
County: Macomb-District 36

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, an in-person hearing was held on April 1, 2015, from Sterling Heights, Michigan. Participants on behalf of Claimant included ██████████, Claimant's mother and authorized hearing representative (AHR). Participants on behalf of the Department of Human Services (Department) included ██████████, Hearing Facilitator.

ISSUE

Did the Department properly reduce Claimant's Food Assistance Program (FAP) benefits effective March 1, 2015 ongoing?

Did the Department properly process Claimant's January 21, 2015 State Emergency Relief (SER) application?

Did the Department properly process Claimant's Medical Assistance (MA) case for November 2014?

Did the Department properly implement the Hearing Decision concerning Claimant's Child Development and Care (CDC) benefits issued by Administrative Law Judge (ALJ) ██████████ on March 11, 2015?

Did the Department properly close the CDC case effective November 30, 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 was an ongoing recipient of FAP, MA and CDC benefits.
2. Claimant was a simplified reporter (SR) for FAP purposes.
3. Claimant's household consisted of Claimant and her minor son.
4. On January 20, 2015, the Department sent Claimant a Notice of Case Action notifying her that (i) her CDC case had closed effective November 30, 2014 because she had failed to verify requested information and (ii) she was approved for monthly FAP benefits of \$305 as a simplified reporter effective December 1, 2014 to May 31, 2015.
5. On January 21, 2015, Claimant submitted an SER application seeking assistance with her gas bill and submitted paystubs with her application.
6. In January 2015, the Department recalculated Claimant's FAP eligibility.
7. On January 28, 2015, the Department sent Claimant a SER Decision Notice notifying her that if she provided proof of payment of a \$102.30 income/asset copayment by February 19, 2015, the Department would pay \$150.95 towards her outstanding \$253.25 gas bill.
8. Claimant timely paid her income/asset copayment, and the Department paid its payment to the gas provider.
9. On January 29, 2015, the Department sent Claimant a Notice of Case Action notifying her that her FAP benefits were decreasing to \$229 effective March 1, 2015.
10. On February 6, 2015, the Department sent Claimant a Notice of Case Action notifying her that her FAP benefits were decreasing to \$222 effective March 1, 2015.
11. On March 10, 2015, Claimant had a hearing concerning her MA and CDC case.
12. In a Hearing Decision issued on March 11, 2015, the presiding ALJ affirmed the Department's decision closing Claimant's and her child's MA case for November 2014 but reversed the Department's closure of Claimant's CDC case for April 2014 to November 2014 and ordered the Department to issue any retroactive CDC benefits Claimant was eligible to receive.
13. On February 4, 2015 and February 17, 2014, Claimant filed requests for hearing disputing (i) her CDC case for April 2014 ongoing; (ii) MA for November 2014 ongoing; (iii) her FAP decrease; (iv) her MA deductible; and (v) her SER decision.

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).

FAP Benefits

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 was initially approved for monthly FAP benefits of \$330 effective December 1, 2014 in a January 20, 2015 Notice of Case Action. The Notice informed Claimant that she was a simplified reporting group and that she had to report changes in income only if the household's gross earned and unearned income exceeded \$1705.

The AHR testified that Claimant's income had not exceeded \$1705, but she was subsequently informed that her FAP benefits were decreasing to \$229, then to \$222, effective March 1, 2015. Although simplified reporting groups are required to report only when the group's actual gross monthly income exceeds the simplified reporting income limit for their group size, if the Department becomes aware of changes, the Department must act on the changes even though the client was not required to report the change. BAM 200 (December 2013), p. 1.

In this case, although Claimant did not report that her income exceeded \$1705, the Department received additional income information in connection either with Claimant's SER application or her CDC case. Therefore, the Department acted in accordance with Department policy when it recalculated Claimant's FAP budget in light of the new income information it received.

The Department presented a FAP net income budget showing the calculation of Claimant's monthly FAP benefits for March 1, 2015, which was reviewed with the AHR at the hearing. The AHR confirmed that there were two members in Claimant's FAP group and that neither was a senior/disabled/veteran (SDV) member of the group. BEM 550 (February 2014), p. 1. Because there were no SDV members in the group, Claimant was not eligible for a medical expense deduction and the budget properly showed no deduction for such expenses. BEM 554 (October 2014), p. 1. The AHR testified that Claimant had no child support expenses and the budget properly showed no such expenses. Claimant was eligible for a \$154 standard deduction applicable to a

two-person FAP group and her excess shelter deduction was limited to the \$490 maximum available to groups with no SDV members, as shown on the budget. BEM 556 (July 2013), pp. 4-5; RFT 255 (October 2014), p. 1.

The budget showed \$1481 in gross monthly earned income, which the Department testified was based on the following gross pay information from [REDACTED] (a/k/a [REDACTED]): \$144 received on January 2, 2015; \$292.50 received on January 9, 2015; \$328.80 received on January 16, 2015; and \$144 received on January 23, 2015. The average of this weekly income, multiplied by 4.3 in accordance with Department policy (see BEM 505 (July 2014), pp. 7-8), results in gross monthly income of \$977, substantially less than the figure used by the Department. The AHR admitted that Claimant had a second job at [REDACTED] (MCC) and had earned income from that job in January 2015. However, the Department did not have any evidence showing that it considered earned income from MCC. In the absence of any further support for its earned income figure, the Department has failed to satisfy its burden of showing that it acted in accordance with Department policy when it calculated Claimant's gross income. Claimant is also eligible for an earned income deduction equal to 20% of her earned income. BEM 556, p. 3. Because the Department has failed to satisfy its burden of showing that it calculated the gross income figure in accordance with policy, consequently, the Department has failed to satisfy its burden of showing that it calculated Claimant's earned income deduction properly.

The Department also testified that it considered Claimant's average 90-day of child support income in calculating her unearned income of \$49 monthly. In calculating child support income, the Department is required to use the average of child support payments received in the past three calendar months, unless changes are expected. BEM 505, p. 3. Unusual amounts not expected to continue should be excluded. BEM 505, p. 3.

The Department testified that it considered the child support Claimant received in December 2014, January 2015 and February 2015 in determining average monthly child support for the budget. However, the child support figures shown on the consolidated inquiry (Exhibit G) do not support the Department's calculation. It is noted that, while the AHR was unable to confirm the monthly child support received by Claimant, she testified that the support received was inconsistent. Based on the evidence presented, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it calculated the unearned income.

Although the budget showed \$140 for dependent care deduction, the Department indicated that Claimant was not eligible for this deduction. A client is eligible for a deduction for unreimbursed, out-of-pocket dependent care expenses when such care is necessary to enable a member of the FAP group to work. BEM 554, p. 7. The expense does **not** have to be paid to be allowed. BEM 554, p. 7. In this case, the AHR testified that she cared for Claimant's child while Claimant worked and, although Claimant had not paid her for her out-of-pocket expenses because they were waiting for the

Department to resolve the CDC issue in order to determine what those expenses were, Claimant continued to incur expenses in January 2015.

SER Application Decision

The State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by the Department (formerly known as the Family Independence Agency) pursuant to MCL 400.10 and Mich Admin Code, R 400.7001 through R 400.7049.

Claimant applied on January 21, 2015 for SER assistance of \$253.25 for outstanding gas bills. In a January 28, 2015 SER Decision Notice, the Department notified Claimant that it would pay \$150.95 towards the requested assistance upon her presenting proof of her payment of a \$102.30 contribution by February 19, 2015. At the hearing, the Department argued that because the AHR verified that Claimant had paid her copayment and the Department had paid its agreed payment, there was no longer an emergency and, therefore, no issue for hearing. A condition of SER eligibility is that the SER applicant had an emergency that could be resolved through issuance of SER benefits. ERM 101 (March 2013), p. 1. Because there was an emergency at the time of application, the Department cannot rely on the fact that the issue has been currently resolved to avoid addressing the merits of the issue.

The January 28, 2015 SER Decision Notice indicated that Claimant's contribution resulted from an income/asset copayment. In order to be eligible for assistance with energy services, which includes amounts owed for heat services, the household member's assets and income must be budgeted. ERM 301 (December 2014), pp. 1, 4. As asset copay results when a client has cash assets in excess of \$50. ERM 206 (October 2014), p. 1. While the household income is calculated in order to determine if the group's income exceeds the income limit for SER energy services assistance, there is no income copayment for energy-related services. ERM 301, p. 1.

In this case, the Department presented no evidence establishing that Claimant had cash assets in excess of \$50. Because there is no income copayment for energy-related services and the Department failed to show that Claimant had cash assets in excess of \$50, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it calculated Claimant's SER contribution.

The AHR testified that she had been informed by her worker that the copayment was due to Claimant's failure to make payments in the six months preceding the SER application. For a SER group of two, a client must pay minimum required payments of \$53 towards heating bills for each of the six months preceding the application month and any amounts paid less than \$53 are part of the shortfall amount the client must pay towards the SER assistance requested. ERM 301, pp. 5-7. However, the Department did not present any evidence that the calculation of Claimant's contribution was due to Claimant having unmet requirements payments. Therefore, to the extent the Department relied on a shortfall to establish Claimant's contribution, the Department

failed to satisfy its burden of showing that acted in accordance with Department policy in calculating the contribution amount.

MA Case

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

At the hearing, the AHR testified that the issue concerning the MA deductible had been resolved and she did not wish to pursue her hearing request concerning the deductible. Therefore, that issue is dismissed.

The AHR indicated that she continued to be concerned about Claimant and her son's MA eligibility for November 2014. The Hearing Decision issued on March 11, 2015 affirmed the Department's closure of Claimant's and her child's MA case in November 2014. Because that issue has been previously addressed by an ALJ, Claimant is limited to requesting a rehearing or reconsideration on the matter. BAM 600 (April 2015), pp. 43-46. Accordingly, the Department's denial of Claimant's MA coverage for November 2014 is not properly presented for hearing and the MA issue is therefore dismissed.

The AHR indicated that subsequent to the February 17, 2015 request for hearing, she received a Notice of Case Action informing her that Claimant's child was eligible for MA for November 2014. Because that Notice was sent after the request for hearing was submitted, the matter of the child's November 2014 MA coverage is not properly presented for hearing.

CDC Case

The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, 42 USC 601-619, 670-679c, and 1397-1397m-5; the Child Care and Development Block Grant of 1990, PL 101-508, 42 USC 9858 to 9858q; and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193. The program is implemented by 45 CFR 98.1-99.33. The Department administers the program pursuant to MCL 400.10 and provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001-.5020.

Claimant requested a hearing concerning the status of her CDC case for April 2014 ongoing. In a Hearing Decision issued on March 11, 2015, the presiding ALJ ordered the Department to follow-up on the Help Desk ticket to resolve the CDC issue for April 2014 to November 2014 and issue retroactive benefits to Claimant if she is otherwise entitled to them. The Department acknowledged that there was an outstanding,

unresolved help desk ticket concerning this matter. The Department is required to implement a Hearing Decision order within 10 days of the date the Hearing Decision is mailed. BAM 600 (January 2015), p. 40. Therefore, the Department has failed to act in accordance with Department policy when it failed to implement the March 11, 2015, Hearing Decision and issue CDC benefits to Claimant that she is eligible to receive.

On January 20, 2015, the Department sent Claimant a Notice of Case Action advising her that her CDC case was closed effective November 30, 2014, because she had failed to verify requested information. The Department did not present any evidence support the closure of Claimant's case effective November 30, 2014. Therefore, the Department has failed to satisfy its burden of showing that it acted in accordance with Department policy in closing Claimant's CDC case.

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 (A) did not act in accordance with Department policy when it failed to process Claimant's CDC case for April 2014 to November 2014 and (B) failed to satisfy its burden of showing that it acted in accordance with Department policy when it (i) calculated Claimant's FAP benefits effective March 1, 2015 ongoing; (ii) calculated Claimant's SER copayment; (iii) closed Claimant's CDC case effective November 30, 2015

DECISION AND ORDER

For the reasons stated above, Claimant's hearing request with respect to her MA issues is DISMISSED.

The Department's FAP, SER and CDC decisions are **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. Resolve the CDC issue for April 2014 through November 2014 in accordance with the March 11, 2015 Hearing Decision and issue any retroactive CDC benefits to Claimant if she is otherwise entitled to them;
2. Reinstate Claimant's CDC case as of November 30, 2014;
3. Issue supplements to Claimant's provider for CDC benefits Claimant is eligible to receive from November 30, 2014 ongoing;
4. Reregister and reprocess Claimant's January 21, 2015 SER application;

5. Issue supplements to Claimant's provider for any SER benefits Claimant was eligible to receive but did not;
6. Notify Claimant in writing of its SER decision;
7. Recalculate Claimant's FAP benefits for March 1, 2015 ongoing; and
8. Issue supplements to Claimant for any FAP benefits she is eligible to receive but did not from March 1, 2015 ongoing.



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

Date Signed: **4/3/2015**

Date Mailed: **4/3/2015**

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]