

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

IN THE MATTER OF:

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Reg. No.: 15-004777
Issue No.: 3008
Case No.: ██████████
Hearing Date: April 29, 2015
County: Wayne (15-Greydale)

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; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on April 29, 2015, from Detroit, Michigan. Participants on behalf of Claimant included Claimant ██████████. Participants on behalf of the Department of Health and Human Services (Department) included ██████████

ISSUE

Did the Department properly reduce Claimant's Food Assistance Program (FAP) benefits effective April 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. Claimant is the sole member of her FAP group and over age 65.
3. Claimant receives \$781 in gross monthly Retirement, Survivors and Disability Insurance (RSDI) benefits.
4. On March 6, 2015, the Department sent Claimant a Notice of Case Action notifying her that her monthly FAP benefits were decreasing to \$16 effective April 1, 2015 (Exhibit F).
5. On March 23, 2015, Claimant filed a request for hearing disputing the reduction in her FAP benefits.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, 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 Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

Claimant disputed the reduction of her monthly FAP benefits from \$133 to \$16 effective April 1, 2015. At the hearing, the FAP net income budget used by the Department in calculating Claimant's FAP benefits for April 2015 (Exhibit D) was reviewed with Claimant.

Claimant confirmed that she received monthly RSDI income of \$781, as shown on the budget. Because Claimant is over age 65, she is a senior/disabled/veteran (SDV) member of her FAP group. See BEM 550 (February 2014), pp 1-2. FAP groups with one or more SDV members and no earned income are eligible for the following deductions from the group's total income:

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

BEM 554 (October 2014), p. 1.

Based on Claimant's one-person FAP group, Claimant was eligible for a \$154 standard deduction, as shown on the budget. RFT 255 (October 2014), p. 1. Claimant confirmed that she had no day care or child support expenses and had not verified any out-of-pocket medical expenses to the Department prior to the hearing. Therefore, the budget properly showed \$0 for those deductions.

In calculating a client's excess shelter deduction, the Department considers the client's (i) monthly shelter expenses and (ii) the applicable utility standard for any utilities the client is responsible to pay. BEM 556, pp. 4-5. Claimant acknowledged that the

Department properly considered her monthly rent of \$185 as shown on the excess shelter deduction budget (Exhibit E). The utility standard that applies to a client's case is dependent on the client's circumstances. The Department explained that, because Claimant's heating and cooling obligation was included in her rent, as a result of a change in Department policy, she was no longer eligible for the \$553 mandatory heat and utility (h/u) standard, which is the most advantageous utility standard available to a client. See RFT 255, p. 1.

A client is eligible for the \$553 mandatory h/u standard if (i) the client is responsible for, or contributes towards heating or cooling (including room air conditioner) expenses, (ii) the landlord bills the client for excess heating or cooling; (iii) the client has received a home heating credit (HHC) in an amount greater than \$20 in the application month or in the immediately preceding 12 months prior to the application month; (iv) the client received a low income home energy assistance payment (LIHEAP) payment or a LIHEAP payment was made on their behalf in an amount greater than \$20 in the application month or in the immediately preceding 12 months prior to the application month; or (v) the client otherwise has **any** responsibility for the heating/cooling expense. BEM 554, pp. 16-20. If a client is not eligible for the mandatory h/u standard, the client may be eligible for mandatory *individual* standards for non-heat electric, water and/or sewer, telephone, cooking fuel, and/or trash removal, as applicable. BEM 554, pp. 20-23.

In this case, Claimant testified at the hearing that she had a room air conditioner. FAP groups who pay for cooling (including room air conditioners) are eligible for the h/u standard if they verify they have the responsibility to pay for non-heat electric. BEM 554, p. 17. There was no evidence that the Department asked Claimant whether she had a room air conditioner at any time prior to recalculating her FAP budget. In light of Claimant's testimony that she had a room air conditioner and the Department's acknowledgement that Claimant had verified her responsibility for non-heat electricity, the Department did not act in accordance with Department policy when it determined that Claimant was ineligible for the \$553 mandatory h/u standard and, consequently, when it calculated Claimant's excess shelter deduction and her monthly FAP benefits.

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 calculated Claimant's FAP benefits for April 1, 2015 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 benefits for April 1, 2015, ongoing;
2. Issue supplements to Claimant for any FAP benefits she is eligible to receive but did not from April 1, 2015, ongoing; and
3. Notify Claimant in writing of its decision.



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

Date Signed: **5/6/2015**

Date Mailed: **5/7/2015**

ACE / pf

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 copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Hearing Decision from 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]