

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

IN THE MATTER OF:



Reg. No.: 15-006795
Issue No.: 3001
Case No.: [REDACTED]
Hearing Date: June 8, 2015
County: Wayne (19)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 June 8, 2015 from Inkster, Michigan. Participants included the above-named Claimant. Participants on behalf of the Michigan Department of Health and Human Services (MDHHS) included [REDACTED], hearing facilitator.

ISSUE

The issue is whether MDHHS properly determined Claimant's eligibility for Food Assistance Program (FAP) benefits.

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 FAP benefit recipient.
2. Claimant was a member of a 2-person FAP benefit group.
3. Claimant received \$213 in countable gross-federally funded Supplemental Security Income (SSI).
4. On an unspecified date in January 2015, Claimant reported to MDHHS that her household's child support income stopped.

5. On [REDACTED], an administrative hearing was held concerning Claimant's FAP eligibility since February 2015.
6. On [REDACTED], an administrative law judge ordered MDHHS to recalculate Claimant's FAP eligibility, effective February 2015, "verifying all deductions, including cooling expense."
7. On [REDACTED], Claimant requested a second hearing to dispute MDHHS' failure to comply with the previous administrative order, and to dispute FAP income calculations from February 2015.

CONCLUSIONS OF LAW

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

Claimant requested a hearing to dispute her FAP eligibility since February 2015. FAP benefit determinations factor the following: income, standard deduction, mortgage expenses utility credit, medical expenses, child support expenses, day care expenses, group size and senior/disability/disabled veteran status. Claimant testified that she specifically disputed the income and utility obligations factored by MDHHS.

Claimant testified that she received \$500 in RSDI, \$213 in federally-issued SSI, and that her son received \$733 in federally-issued SSI. Claimant also testified that she and her son each received \$14/month (on average) in state-issued SSI. Adding up each of Claimant's reported income amounts results in \$1474/month in income.

A FAP budget from June 2015 (not presented as an exhibit) indicated that MDHHS factored \$1514 in unearned income for Claimant's household. Presumably, MDHHS factored identical income in determining Claimant's FAP eligibility for February 2015. MDHHS testimony indicated that the \$40 difference between Claimant's testimony and the FAP budget was that MDHHS budgeted \$253 for Claimant's federally-issued SSI.

Claimant testified that SSA retained \$40 of her monthly SSI payment as part of an administrative recoupment for a previous overpayment. Claimant denied that the overpayment was due to fraud.

Bridges (the DHHS database) counts the gross amount of current SSA-issued SSI as unearned income. BEM 503 (July 2014), p. 32. Amounts deducted by an issuing agency to recover a previous overpayment or ineligible payment are not part of gross income. BEM 500 (July 2014), p. 5. These amounts are excluded as income. *Id.* The following overpayment amounts must be included in gross income:

- Any portion of an overpayment (that is normally countable) if the original payment was excluded income when received.
- Cash assistance recoupment amounts due to IPV are automatically counted for FAP in Bridges.
- SSI amounts recouped due to Intentional Program Violation (IPV) are included in countable gross income for cash assistance programs and FAP.

MDHHS failed to provide any evidence that any of the above-cited exceptions apply to Claimant's circumstances. Accordingly, MDHHS failed to justify factoring the \$40/month recouped by SSA in determining Claimant's FAP eligibility. It is found that MDHHS is to budget \$213 in federally-issued SSI benefits for Claimant.

Claimant also alleged that MDHHS wrongly factored child support in her FAP determination for February 2015. It was not disputed that Claimant last received child support in January 2015. Claimant testified that she reported to MDHHS in February 2015 that she stopped receiving child support; Claimant's testimony implied that her reporting occurred in the first half of February 2015.

Income decreases that result in a benefit increase must be effective no later than the first allotment issued 10 days after the date the change was reported, provided necessary verification was returned by the due date. BAM 505 (July 2014), p. 10. It is presumed that Claimant either timely returned verification or that MDHHS did not require verification because they have access to Claimant's child support income history.

If Claimant's testimony is accepted, then MDHHS policy dictates that Claimant's FAP eligibility be updated beginning March 2015, the first month following the 10th day after Claimant's reported change. As it happened, MDHHS actions suggest that Claimant may have reported a child support income change earlier than when Claimant stated.

MDHHS testified that on [REDACTED], Claimant's FAP eligibility was recalculated from February 2015 and that Claimant's child support income was excluded. MDHHS did not present updated budgets to verify their testimony, but the testimony was credible. If MDHHS processed Claimant's change for February 2015, then it can be presumed that MDHHS recognized that Claimant reported a child support income change early enough in January 2015 to affect Claimant's February 2015 eligibility. Based on the presented evidence, it is found that Claimant timely reported a child support income change to affect her February 2015 FAP eligibility.

Claimant also requested a hearing to dispute a MDHHS failure to credit Claimant with a heat/utility (h/u) standard obligation. The heat/utility standard covers all heat and utility costs including cooling, except actual utility expenses. BEM 554 (October 2014), p. 14.

MDHHS presented a Hearing Decision (Exhibits 1-4) dated [REDACTED]. The Hearing Decision ordered MDHHS to redetermine Claimant's FAP eligibility, effective February 2015, subject to the finding that Claimant was eligible for the h/u standard.

When a decision requires a case action different from the one originally proposed, a DHS-1843, Administrative Hearing Order Certification, is sent with the hearing decision. BAM 600 (April 2015), p. 42. MDHHS is to complete the necessary case actions within 10 calendar days of the mailing date noted on the hearing decision. *Id.*

Two months have passed since an administrative judge ordered MDHHS to redetermine Claimant's FAP eligibility by factoring the h/u standard. MDHHS conceded that they have still not complied with the administrative order. MDHHS will again be ordered to redetermine Claimant's FAP eligibility, effective February 2015, by factoring the standard h/u credit.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly determined Claimant's FAP eligibility, effective February 2015. It is ordered that MDHHS perform the following actions:

- (1) redetermine Claimant's FAP eligibility, effective February 2015, subject to the following findings:
 - a. Claimant is eligible for the h/u standard, per administrative order dated April 8, 2015;
 - b. Claimant's countable gross federally-issued SSI is \$213/month;
 - c. Claimant reported to MDHHS before [REDACTED], that her child support income stopped; and
- (2) supplement Claimant for any benefits improperly not issued.

The actions taken by MDHHS are **REVERSED**.



Christian Gardocki
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **6/19/2015**

Date Mailed: **6/19/2015**

CG / hw

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:

