

**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.: 15-005397
Issue No.: 3008
Case No.: ██████████
Hearing Date: May 11, 2015
County: Wayne-District 35 (Redford)

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 May 11, 2015, from Detroit, Michigan. Participants on behalf of Claimant included Claimant and ██████████, her husband. Participants on behalf of the Department of Health and Human Services (Department) included ██████████, Hearing Facilitator.

ISSUE

Did the Department properly calculate Claimant's Food Assistance Program (FAP) benefits for May 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.
2. Claimant has a household of eight.
3. Claimant's husband is employed and is paid twice each month, on the 5th and 20th.
4. On March 25, 2015, the Department sent Claimant a Notice of Case Action notifying her that her FAP monthly benefits were decreasing to \$453 effective May 1, 2015 (Exhibit H).
5. On April 2, 2015, Claimant filed a request for hearing disputing the Department's actions.

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 in her monthly FAP benefits. The Department presented a FAP net income budget showing the information used to calculate Claimant's FAP benefits, which was reviewed with Claimant and her husband at the hearing (Exhibit F).

The budget showed earned income received by the household from Claimant's husband's employment and unearned income received from child support. Claimant's husband testified that he was paid twice a month, on the 5th and 20th of each month, and confirmed that he was paid \$1092 on February 5, 2015, and \$1033 on February 20, 2015, the pay stubs the Department testified it used in calculating the household's gross monthly earned income. Because Claimant's husband is paid two times a month, not bimonthly, to determine his gross monthly income, the two paystubs are added together and no multiplier is applied. See BEM 505 (July 2014), p. 8. When added together, Claimant's husband's gross monthly income is \$2125, not \$2200 as shown on the budget. Therefore, the Department has failed to satisfy its burden of showing that it calculated the household's gross income in accordance with Department policy.

The budget shows gross monthly unearned income totaling \$845, which the Department testified was the child support received by Claimant's household. In prospecting future child support income, Department policy requires that, unless changes are expected, the Department must use the average of child support payments received in the past three calendar months. BEM 505 (July 2014), p. 3. However, the Department does not include child support payments that are unusual and not expected to continue. BEM 505, p. 3.

In this case, the Department testified that the \$845 figure on the budget was the sum of the average child support received by the household for three of the children in the household in January 2015, February 2015, and March 2015. However, the Department acknowledged that its calculation of average monthly child support received by Claimant improperly included a lump sum payment the household received in

February 2015. Claimant explained that the child support she received in February 2015 included funds garnished from the children's father's taxes. Tax intercept payments which are not expected to recur are excluded from calculating child support average monthly income. BEM 505, p. 4. Therefore, the Department did not act in accordance with Department policy when it included the February 2015 child support in calculating Claimant's monthly child support income.

The deductions on the budget were also reviewed with Claimant and her husband. Claimant acknowledged that there were 8 members in her FAP group and none were senior/disabled/veteran (SDV) members. A household with earned income and no SDV members is eligible for the following deductions:

- Dependent care expense.
- Excess shelter deduction up to \$490, which is based on monthly shelter expenses and the applicable utility standard.
- Court-ordered child support and arrearages paid to non-household members.
- Earned income deduction equal to 20% of the group's earned income.
- A standard deduction based on the FAP group size.

BEM 554 (October 2014), p. 1, 14-22; BEM 550 (February 2014), p. 1; BEM 556 (July 2013), p. 3; RFT 255 (October 2014), p. 1.

The budget showed a standard deduction of \$220, the applicable standard deduction based on Claimant's eight-person group size. RFT 255, p. 1. Claimant confirmed that the household had no child support or day care expenses. Therefore, the budget properly showed \$0 for those deductions. Because earned income was not properly calculated, the earned income deduction is not properly calculated.

The excess shelter deduction budget shows that that Claimant was not eligible for an excess shelter deduction because the sum of her monthly shelter expenses and the applicable utility standard did not exceed 50% of the adjusted gross income. BEM 556, pp. 4-5. The Department applied the \$553 heat and utility standard, the most favorable standard applicable to a client. BEM 554, pp. 14-22. Based on Claimant's testimony at the hearing that her household was responsible only for property taxes which were considerably less than the expenses budgeted by the Department, the Department misapplied the housing expenses. Claimant's eligibility for an excess shelter deduction is also dependent on the Department properly calculating Claimant's adjusted gross income. Therefore, the Department has failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined that Claimant was ineligible for an excess shelter deduction.

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 May 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 May 1, 2015, ongoing;
2. Issue supplements to Claimant for any FAP benefits she was eligible to receive but did not from May 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: **5/21/2015**

Date Mailed: **5/21/2015**

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 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]