

**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.: 15-005937
Issue No.: 3008
Case No.: ██████████
Hearing Date: June 10, 2015
County: Macomb-District 12

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, an in-person hearing was held on June 10, 2015, from Mt. Clemens, Michigan. Participants on behalf of Claimant included Claimant. 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 is the sole member of her FAP group and is over age 65 (Exhibit F).
3. Claimant receives \$698 in monthly Retirement, Survivors, and Disability Income (RSDI) benefits.
4. On April 7, 2015, the Department sent Claimant a Notice of Case Action notifying her that her monthly FAP benefits were decreasing to \$51 effective May 1, 2015, (Exhibit C).
5. On April 14, 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 of her monthly FAP benefits to \$51 effective May 1, 2015. At the hearing, the Department explained that, after Claimant filed her hearing request, it reviewed her FAP budget, determined that her monthly rent had been improperly excluded from the calculation of FAP benefits since February 1, 2015, and recalculated Claimant's FAP benefits to include rent. The Department testified that, as a result of this recalculation, Claimant was issued a supplement bringing her FAP benefits to \$194 for February 2015 to April 2015 and to \$77 for May 2015 and provided an eligibility summary showing the increased benefits (Exhibit A). The FAP net income budget used by the Department in calculating Claimant's FAP benefits for May 2015 before the inclusion of the shelter expenses (Exhibit D) was reviewed with Claimant at the hearing to verify the information used for calculating FAP for May 2015 ongoing.

Claimant confirmed that she received monthly RSDI income of \$698, as shown on the budget. The Department established through an SOLQ report (Exhibit F) that, in addition to the RSDI benefits, the Social Security Administration (SSA) had approved Claimant for monthly Supplemental Security Income (SSI) benefits of \$55, with the first payment made on May 2, 2015. Current SSA-issued SSI is considered in FAP budget. BEM 503 (July 2014), p. 32. However, a client has 10 days to report receipt of income and the Department processes increases in income to affect future months' FAP benefits in accordance with BAM 220. BAM 105(April 2015), p. 11; BAM 220 (April 2015), pp. 7. Therefore, while the \$55 SSI payment may affect future FAP benefits, and the Department will be required to notify Claimant of FAP changes, it was properly excluded from Claimant's May 2015 budget. See BEM 503 (July 2014), p. 32. Therefore, the only income properly included in Claimant's May 2015 FAP net income budget was her \$698 RSDI.

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. Therefore, the budget properly showed \$0 for those deductions. The budget showed a \$70 medical expense deduction, which the Department explained was the difference between the \$104.90 Part B Medicare premium paid by Claimant and the \$35 threshold for medical expense deductions. However, the evidence at the hearing established that, beginning May 2015, the State began paying Claimant's \$104.90 Medicare Part B premium (Exhibit F). Claimant acknowledged that she had received her full \$698 in RSDI benefits for May 2015 ongoing and did not have any additional out-of-pocket medical expenses that she had presented to the Department. Because Claimant was no longer responsible for her monthly Part B Medicare premium beginning May 2015, the Department improperly included a medical expense deduction in Claimant's FAP budget.

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 confirmed that she had been paying monthly rent of \$164, the amount the Department testified had been used in recalculating her FAP benefits, but testified that her rent increased to \$170 beginning May 2015. Because this change was reported on April 22, 2014 at the prehearing conference, it would affect Claimant's future benefits, in accordance with Department policy. See BAM 220 (April 2015), pp. 6-7.

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 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 \$553 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 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: **6/12/2015**

Date Mailed: **6/12/2015**

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]
[REDACTED]
[REDACTED]
[REDACTED]
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