

**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.: ██████████  
Issue No.: 3008  
Case No.: 102642516  
Hearing Date: June 04, 2015  
County: Wayne-District 15

**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 June 4, 2015, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Health and Human Services (Department) included ██████████, Eligibility Specialist, and ██████████, Family Independence Specialist.

**ISSUE**

Did the Department properly implement the Hearing Decision issued by Administrative Law Judge (ALJ) Robert Chavez on March 31, 2015, concerning Claimant's 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 recipient of FAP benefits.
2. On February 13, 2015, Claimant filed a hearing request disputing the calculation of her FAP benefits.
3. In a Hearing Decision issued on March 31, 2015, ALJ Chavez ordered the Department to recalculate Claimant's FAP budget retroactive to November 15, 2014, changing Claimant's income to reflect that no unemployment benefits were received until December 10, 2014.

4. The Department recalculated Claimant's FAP benefits to include unemployment income and concluded that no supplements were due.
5. On April 27, 2015, Claimant filed a hearing request 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.

In the Hearing Decision issued on March 31, 2015 concerning Claimant's FAP allotment, ALJ Chavez indicated that, because the Department had failed to present a FAP budget showing the calculation of Claimant's benefits, it had failed to satisfy its burden of showing that it calculated the benefits in accordance with Department policy. ALJ Chavez further concluded that Claimant "submitted substantial evidence showing that no unemployment benefits were received until December 10, 2014" and ordered the Department to recalculate Claimant's FAP budget, retroactive to November 15, 2014, changing Claimant's income to reflect that no unemployment benefits were received until December 10, 2014.

At the hearing, the Department testified that it had recalculated Claimant's FAP benefits and determined that she was not due a supplement. The Department admitted that it continued to budget unemployment benefits in Claimant's budget because its consolidated inquiry with the State Unemployment Insurance Agency showed that Claimant was receiving unemployment benefits (Exhibit C). However, the Department acted contrary to ALJ Chavez's order in doing so. If a party disputes a hearing decision, the party may seek a rehearing or reconsideration of the decision, in accordance with Department policy. BAM 600 (April 2015), p. 44. The Department acknowledged that it did not seek a rehearing or reconsideration of ALJ Chavez's decision. Therefore, the Department was bound to ALJ Chavez's order requiring that the Department remove unemployment benefits from Claimant's income until it was received on December 10, 2014.

For income increases that result in a benefit decrease, the Department must take action and issue notice to the client within the 10 days standard of promptness, with the effective month of the decrease the first full month that begins after the negative action effective date. BEM 505 (July 2014), p. 11; BAM 220 (April 2015), p. 7. Therefore, the unemployment benefits would not be budgeted into Claimant's FAP budget until January 2015. Claimant testified that her unemployment benefits ended January 10, 2015, and that she reported this change in the redetermination she submitted to the Department on January 27, 2015. The consolidated inquiry supports Claimant's testimony that her benefits ended January 10, 2015 (Exhibit C). Therefore, unemployment income is budgeted until the March 2015 allotment, which is the first allotment issued 10 days after the date the change was reported. BAM 220, p. 6.

Claimant's FAP budget, as reflected in the September 16, 2014, Notice of Case Action (Exhibit B), was reviewed at the hearing. The budget showed that Claimant was receiving an excess shelter deduction based on monthly shelter expenses of \$57, which Claimant confirmed, and a \$124 non-heat electric standard and \$34 telephone standard. A FAP client who is responsible for heating or cooling expenses separate from rent is eligible for the \$553 heat and utility standard, which is the most beneficial utility standard available to a FAP client. BEM 554 (October 2014), pp. 14-20). If the client is ineligible for the mandatory heat and utility standard, then the mandatory individual standards may apply. BEM 554, p. 20.

At the hearing, Claimant reported that she was responsible for all utilities, including heating and cooling. The Department acknowledged that Claimant was responsible for heating costs (Exhibit E). Therefore, the Department did not act in accordance with Department policy when it did not apply the \$553 mandatory heat and utility standard when it calculated her excess shelter deduction and, consequently, her FAP benefits.

Claimant also disputed the Department's calculation of her child support income. The Department is required to use the average of child support payments received in the past three month unless changes are expected, excluding any amounts that are unusual and not expected to continue. BEM 505, (July 2014), pp. 3-4. In this case, the Department provided a consolidated inquiry showing the child support Claimant received from July 2014 through October 2014. Claimant testified that the amounts on the consolidated inquiry were accurate but that the child support had substantially decreased. Based on the evidence available at the time it calculated FAP benefits for November 2014 ongoing, however, the Department could properly rely on the consolidated inquiry for July 2014 to October 2014. However, the Department but did not present any evidence showing the amount of child support it considered in assessing Claimant's monthly child support unearned income for FAP purposes. Therefore, the Department did not satisfy its burden of showing that it acted in accordance with Department policy when it calculated child support income.

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 implemented ALJ Chavez's Hearing Decision and recalculated Claimant's FAP benefits for November 15, 2014, 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 November 15, 2014, ongoing;
2. Issue supplements to Claimant for any FAP benefits she was eligible to receive but did not from November 15, 2014, ongoing; and
3. Notify Claimant in writing of its decision.



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

Date Signed: **6/10/2015**

Date Mailed: **6/10/2015**

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]