

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-008554
Issue No.: 3001
Case No.: [REDACTED]
Hearing Date: June 29, 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, a telephone hearing was held on June 29, 2015, from Detroit, Michigan. Participants included the above-named Claimant, [REDACTED], Claimant's friend, testified on behalf of 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 Food Assistance Program (FAP) eligibility.

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 tenant with no responsibility for paying gas or water.
3. On [REDACTED], MDHHS determined Claimant's FAP eligibility, effective January 2015, in part, by not crediting Claimant with a natural gas or water obligation.
4. On [REDACTED], Claimant requested a hearing to dispute her FAP eligibility, effective December 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 from January 2015. MDHHS presented un rebutted testimony that a written notice of Claimant's January 2015 FAP eligibility was mailed to Claimant on [REDACTED].

The client or authorized hearing representative has 90 calendar days from the date of the written notice of case action to request a hearing. BAM 600 (4/2015), p. 6. One notable exception to the 90 day timeframe exists for FAP eligibility. The client or AHR may request a hearing disputing the current level of benefits at any time within the benefit period. *Id.*, p. 6.

Claimant requested a hearing on [REDACTED]. Claimant's hearing request was well beyond the 90 day timeframe to dispute her FAP eligibility from January 2015. Claimant's hearing request is valid to dispute her FAP eligibility for May 2015 (the current month as of the date of Claimant's hearing request).

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. During the hearing, MDHHS credibly stated all of the amounts used in Claimant's FAP budget (e.g. \$747 in unearned income, \$350 in rent, and \$0 in medical, day care, and child support expenses). Claimant was asked if she disputed any of the reported amounts of her MDHHS budget. Claimant responded that all of these budget factors were accurate except for the utilities factored by MDHHS.

MDHHS testified that Claimant was credited with a telephone obligation and no other utilities. Claimant contended that MDHHS should have credited her for additional utility obligations.

Claimant brought two leases to the hearing- one which covered a period through May 2015, and one which became effective June 2015. This decision is only concerned with Claimant's lease affecting May 2015 because that is the only month of eligibility in dispute.

Claimant testified that she paid her landlord \$350/month. During the hearing, the testifying MDDHS specialist read aloud a portion of Claimant's lease which stated, "Tenant shall pay to (Claimant's landlord) \$350 gas and water are included at a fixed rate." The lease was not admitted as an exhibit so punctuation is uncertain.

A literal reading of Claimant's lease somewhat implies a monthly Claimant obligation to pay water and gas "at a fixed rate." If Claimant's lease is found to sufficiently verify a partial Claimant responsibility to pay gas and water, MDHHS policy supports crediting Claimant accordingly in her FAP budget. Shelter, the heat and utility standard and the individual utility standards are never prorated, even if the expense is shared. BEM 554 (October 2014), p. 2. No other evidence supported such an interpretation.

It was not disputed that Claimant's residence's gas and water were in the landlord's name. This supports a finding that Claimant had no obligation to pay water or gas.

During the hearing, Claimant was asked if her lease specified how much of her \$350 monthly payment to her landlord was for rent and how much was for utilities. Claimant could not provide any such breakdown within her lease. Claimant testimony also did not allege that she had some verbal agreement with her landlord.

Based on the presented evidence, Claimant's \$350 housing obligation if found to be only for rent. Thus, Claimant has no obligation to pay for any portion of water or natural gas usage. Accordingly, MDDHS properly did not include water and gas credits in Claimant's FAP budget.

Claimant can be comforted by two options which may assist in increasing her future FAP eligibility. If Claimant is able to provide MDHHS with a more unequivocal statement from her landlord concerning an obligation to pay water or natural gas, she can always submit the statement to MDHHS for consideration of future FAP eligibility.

Secondly, Claimant appears eligible for the Michigan Combined Application Project (MiCAP). MiCAP is a Food Assistance demonstration project approved by the Food and Nutrition Service (FNS). BEM 618 (July 2014), p. 1. One qualifying factor for MiCAP is receiving no income other than SSI. FAP eligibility through MiCAP generally is more client-friendly concerning issuance amounts and frequency of redetermination periods. For example, clients who do not pay utilities are eligible to receive \$171 in FAP benefits (see *Id.*, p. 3). The telephone number for MiCAP is 877-416-4227. The program is only noted as a possible way for Claimant to increase her FAP eligibility; Claimant is not entitled to any remedy related to MiCAP because she hasn't applied for the program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that Claimant untimely requested a hearing to dispute her FAP eligibility

from January 2015 through April 2015. Claimant's hearing request is **PARTIALLY DISMISSED**.

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly determined that Claimant was not responsible for paying water or natural gas in determining Claimant's FAP eligibility from May 2015. The actions taken by MDHHS are **AFFIRMED**.



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

Date Signed: **7/2/2015**

Date Mailed: **7/2/2015**

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:

