

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

IN THE MATTER OF:

██████████
██████████
██████████

Reg. No.: 15-012270
Issue No.: 3008;5001
Case No.: ██████████
Hearing Date: August 31, 2015
County: Macomb-District 20 (Warren)

ADMINISTRATIVE LAW JUDGE: Zainab Baydoun

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 August 31, 2015, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Health and Human Services (Department) included ██████████, Hearings Facilitator.

ISSUE

Did the Department properly calculate the amount of Claimant's Food Assistance Program (FAP) benefits and deny Claimant's application for State Emergency Relief (SER) assistance with heat and electric?

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 previously an ongoing recipient of FAP benefits. Claimant's FAP case closed effective May 1, 2015.
2. On May 26, 2015, Claimant submitted a new application for FAP benefits.
3. On or around May 26, 2015, Claimant submitted an application for SER assistance with her heat and electric bills.
4. On May 29, 2015, the Department sent Claimant a State Emergency Relief Decision Notice informing her that her SER request with electric was denied on the basis that she does not have a past due or shutoff notice and that her request for

SER assistance with heat was denied on the basis that her income/asset copayment is equal to or greater than the amount needed to resolve the emergency. (Exhibit H)

5. On June 8, 2015, the Department sent Claimant a Notice of Case Action informing her that for the period of May 26, 2015, to May 31, 2015, she was approved for \$30 in FAP benefits and that for the period of June 1, 2015, ongoing, Claimant was approved for \$156 in FAP benefits. (Exhibit A)
6. On June 23, 2015, the Department sent Claimant a Notice of Case Action informing her that effective July 1, 2015, ongoing she was approved for FAP benefits in the amount of \$601. (Exhibit D)
7. On July 4, 2015, the Department sent Claimant a Notice of Case Action informing her that effective August 1, 2015, ongoing she was approved for FAP benefits in the amount of \$271. (Exhibit F)
8. On July 8, 2015, Claimant requested a hearing disputing the Department's actions with respect to the calculation of her FAP benefits and the denial of her SER application.

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).

FAP

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 requested a hearing disputing the Department's actions with respect to the calculation of her FAP benefits for the months of May 2015, June 2015, July 2015, and August 2015. At the hearing, the Department acknowledged that for the months at issue, there were errors in the calculation of Claimant's FAP budgets. The FAP EDG Net Income Results Budgets for each of the months at issue were thoroughly reviewed at the hearing. (Exhibit B; Exhibit C; Exhibit E; Exhibit G). It was established that the Department improperly calculated Claimant's unearned income, excess shelter

deduction (exclusion of housing costs and heat and utility standard) and that for the month of August 2015, applied an incorrect FAP group size.

All countable earned and unearned income available to the client must be considered in determining the Claimant's eligibility for program benefits. BEM 500 (April 2015), pp. 1 – 5. The Department considers the gross amount of money earned from Supplemental Security Income (SSI) in the calculation of unearned income for purposes of FAP budgeting. BEM 503 (July 2014), pp. 31-32. State SSI Payments (SSP) are issued quarterly in the amount of \$42 and the payments are issued in the final month of each quarter; see BEM 660. The Department will count the monthly SSP benefit amount (\$14) as unearned income. BEM 503, p.33; see RFT 248 (January 2015), p. 1. The Department is to exclude the amount deducted by an issuing agency to recover a previous overpayment. BEM 500, p. 5.

In this case, Claimant confirmed that her group members receive monthly SSI and SSP benefits. The Department testified that for the months at issue, it was incorrectly budgeting the total amount of unearned income for Claimant's group, as it was improperly including an amount of SSI that is being deducted to recover an overpayment. Thus, the Department did not properly calculate Claimant's unearned income for May 2015, June 2015, July 2015, and August 2015.

With respect to FAP benefits for the months of May 2015 and June 2015, the Department improperly calculated Claimant's excess shelter deduction. Claimant's \$855.71 monthly mortgage was excluded as a housing expense for June 2015 and for both May 2015 and June 2015, the Department failed to apply the \$553 heat and utility standard towards the calculation of Claimant's excess shelter deduction, despite Claimant being eligible. (Exhibit B; Exhibit C). See BEM 554 and BEM 556.

Claimant testified that a member of her FAP group, [REDACTED], left the home on or around July 19, 2015, and that he started receiving SSI benefits on or around July 24, 2015. Claimant stated that she informed the Department that he was no longer in the home at the beginning of August 2015 when she submitted a new application for benefits. Claimant asserted that he should not be included as a FAP group member and that his income should not be used to determine her FAP benefit allotment for July 2015, ongoing, as [REDACTED] left the group and is active on his own case.

For FAP, when a member leaves a group to apply on his own or to join another group, do a member delete in the month you learn of the application/member add. BEM 550 (July 2015) p. 4; BEM 212 (July 2014) p. 9. Additionally, income decreases that result in a benefit increase must be effective no later than the first allotment issued ten days after the date the change was reported, provided necessary verification was returned. BEM 505 (July 2014), p. 10.

The Department testified that [REDACTED] should have been removed as a member of the FAP group and that Claimant's FAP group size should have been reduced to four

effective August 2015. Based on the evidence presented, he was still being included as a FAP group member, although it was unclear whether his income was being budgeted and for which months. Thus, the Department shall process the member delete and income decrease in accordance with the above referenced policy.

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 because of the errors in the calculation of Claimant's unearned income, excess shelter deduction, and FAP group composition, the Department did not act in accordance with Department policy when it calculated Claimant's FAP benefits for May 2015, June 2015, July 2015, and August 2015, ongoing.

SER

The State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by the Department (formerly known as the Department of Human Services) pursuant to MCL 400.10 and Mich Admin Code, R 400.7001-.7049.

In this case, on or around May 26, 2015, Claimant submitted an application for SER assistance with heat and electric services. On May 26, 2015, the Department sent Claimant a SER Decision Notice informing her that her request for SER assistance was denied. (Exhibit H). Eligible households may receive SER assistance with household heat and electricity costs under the energy services program. ERM 301 (February 2015), p.1.

SER Electricity

When the group's heat or electric service for their current residence is in past due status, in threat of shutoff or is already shut off and must be restored, payment may be authorized to the enrolled provider. The amount of the payment is the minimum necessary to prevent shut off or restore service, not to exceed the fiscal year cap. Current bills that are not subject to shutoff should not be included in the amount needed. ERM 301, pp. 1-2. The Department will verify past due status or threatened shutoff by contacting the energy company. ERM 301, p. 9.

The Department stated that Claimant's request for SER assistance with electricity was denied because at the time of application, Claimant's electricity account through [REDACTED] was not in shutoff or past due status. Claimant testified that her electric account might have been in past due or shutoff status but there was no evidence presented at the hearing to support Claimant's testimony. Furthermore, Claimant confirmed that the [REDACTED] payment coupon she submitted to the Department did not indicate that her account was in past due or shutoff status. (Exhibit I). Therefore, the Department acted in accordance with Department policy when it denied Claimant's request for SER assistance with electricity.

SER Heat

The Department will complete a SER budget for each request and determine the payment maximums, required payments, income and asset copayment, and client contributions based on the information provided to determine eligibility for SER. ERM 103, pp. 2-3. SER group members must use their available income and cash assets to help resolve the emergency. ERM 208 (October 2014), p. 1.

In most cases, cash assets in excess of \$50.00 will result in an asset copayment, which cannot be reduced or waived. Copayment amounts are deducted from the cost of resolving the emergency, thus, if the copayment exceeds the need, the application will be denied. ERM 208, pp. 1-2; ERM 103 (October 2013), p. 4.

There are no income copayments for SER requests for energy services, such as heat. With respect to income, clients are either eligible or not. For a group to be eligible for energy services, the combined monthly net income that is received or expected to be received by all group members in the 30-day countable income period, cannot exceed the standard for SER energy services, based on the group size. ERM 208, p. 1. If the income exceeds the limit, the request must be denied; see Exhibit II, SER Income Need Standards for Energy Services. ERM 208, p. 1.

In this case, the Department testified that Claimant's \$385.78 request for SER assistance with heat was denied because the income/asset copayment was equal to or greater than the amount needed to resolve the emergency, as Claimant had sufficient income/assets available to resolve the heating emergency. (Exhibit H; Exhibit I).

At the hearing, the Department presented a SER Assets budget which reflected total liquid assets of \$981.96. (Exhibit J). According to the budget, Claimant had excess cash assets (asset copayment) in the amount of \$931.96, thereby making her ineligible for SER assistance with heat, as the amount of her asset copayment was greater than the \$385.78 request for assistance.

Claimant disputed the Department's testimony that she had excess assets and stated that she provided the Department with two to three bank statements showing a negative balance. The Department did not present any bank statements for review at the hearing but stated that on May 29, 2015, it received a bank statement from Claimant reflecting a balance of \$582.83. This statement was not available at the time the May 26, 2015, SER Decision Notice was issued, however. Thus, the Department's assertion that Claimant's asset copayment of \$931.96 was greater than the amount needed to resolve the emergency was not supported by any documentary evidence.

The Department also presented a SER Copayment Details budget which is stated was used to calculate Claimant's income copayment. (Exhibit K). The Department testified that it determined Claimant's group had unearned income of \$2199 based on SSI benefits for Claimant's children. As discussed above however, there are no income copayments for SER requests with energy services. Therefore, if Claimant's monthly net

income is within the income limits provided in Exhibit II- SER Income Need Standards for Energy Services table in ERM 208, based on her group size at the time of application (five), she will be income eligible for SER assistance with heat, provided that all other eligibility criteria is met.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it denied Claimant's request for SER assistance with heat.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to SER assistance with electric and **REVERSED IN PART** with respect to FAP and SER assistance with heat.

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. Register and process Claimant's May 26, 2015, FAP application;
2. Recalculate Claimant's FAP budget for May 2015, June 2015, July 2015, and August 2015, ongoing;
3. Issue FAP supplements to Claimant from May 26, 2015, ongoing, in accordance with Department policy;
4. Register and process Claimant's SER application for assistance with heat;
5. Determine Claimant's eligibility for SER assistance with heat as of the application date; and
6. Issue a new SER Decision Notice informing Claimant of the Department's decision.



Zainab Baydoun
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **9/4/2015**

Date Mailed: **9/4/2015**

ZB / 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

