

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 15-010903  
Issue No.: 3008; 5000  
Case No.: [REDACTED]  
Hearing Date: September 28, 2015  
County: WAYNE-DISTRICT 55

**ADMINISTRATIVE LAW JUDGE: Eric Feldman**

**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 September 28, 2015, from Detroit, Michigan. Participants on behalf of Claimant included Claimant, [REDACTED] and Claimant's Authorized Hearing Representative (AHR), [REDACTED] Goode. Participants on behalf of the Department of Health and Human Services (Department or MDHHS) included [REDACTED], Case Manager; and [REDACTED], Hearings Facilitator.

**ISSUE**

Did the Department properly decrease Claimant's Food Assistance Program (FAP) allotment to \$34 effective June 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. See Exhibit A, pp. 3-4 and 7-8.
2. Effective [REDACTED] 5, Claimant received a monthly FAP allotment of \$170. See Exhibit A, p. 3.
3. On [REDACTED] the Department received a DHS-3688, Shelter Verification, which indicated that Claimant's total monthly shelter obligation was \$700.00. See Exhibit A, pp. 10-11.

4. On [REDACTED] Claimant applied for State Emergency Relief (SER) assistance in which he indicated that his rent was \$400 or \$450 and that he was responsible for electricity in the amount of \$50. See Exhibit A, pp. 12-14.
5. Effective [REDACTED], ongoing, Claimant's FAP benefits decreased to \$34. See Exhibit A, p. 3.
6. For [REDACTED] ongoing, the Department removed Claimant's shelter expense from his FAP budget. See Exhibit B, p. 3.
7. On [REDACTED], Claimant submitted a total of three hearing requests, which disputed his FAP benefits and SER benefits. See Exhibit A, pp. 16 and 19-24.

### **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.

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.

#### **Preliminary matter**

First, on [REDACTED], Claimant requested a hearing in which he disputed his State Emergency Relief (SER) benefits. See Exhibit A, pp. 21-24. Shortly after commencement of the hearing, Claimant/AHR indicated that he is no longer disputing his SER benefits. As such, Claimant's SER hearing request is DISMISSED.

Second, Claimant submitted three separate hearing requests in which he disputed his FAP allotment. See Exhibit A, pp. 16 and 19-24. During the hearing, Claimant/AHR indicated that he was disputing his FAP decrease effective [REDACTED]. As such, the undersigned addressed Claimant's FAP allotment effective [REDACTED].

### **FAP allotment**

It was not disputed that the certified group size is one and that Claimant is a senior/disabled/disabled veteran (SDV) member. The Department presented the June 2015 FAP budget for review. See Exhibit B, pp. 1-2.

First, the Department calculated Claimant's group gross unearned income to be \$877 (Social Security benefits), which he did not dispute. See Exhibit B, p. 1 and BEM 503 (July 2014), pp. 28-33.

Then, the Department properly applied the \$154 standard deduction for Claimant's group size of one, which resulted in an adjusted gross income of \$723. See Exhibit B, p. 1 and RFT 255 (October 2014), p. 1.

Next, the Department presented Claimant's Excess Shelter Deduction budget (shelter budget) for June 2015. See Exhibit B, p. 3. The shelter budget indicated Claimant's housing expenses was \$0, which he and his AHR disputed.

On [REDACTED] the Department received a DHS-3688, Shelter Verification, which indicated that Claimant's total monthly shelter obligation was \$700.00. See Exhibit A, pp. 10-11. The Department testified that this shelter verification was partially completed and was signed and dated [REDACTED], with a date district office date stamp of May 22, 2015. See Exhibit A, pp. 10-11.

Then, on [REDACTED], Claimant applied for SER assistance in which he indicated that his rent was \$400 or \$450. See Exhibit A, pp. 12-14. The Department testified that it made several attempts to contact the Claimant in order to get clarification, but to no avail. Moreover, the Department testified that it made several attempts to complete a collateral contact with the landlord reported on the shelter verification (Exhibit A, p. 10), but to no avail. Thus, the Department testified that it removed Claimant's shelter expense until the expense could be verified.

Additionally, the Department sent Claimant another DHS-3688, Shelter Verification, on [REDACTED]. See Exhibit A, p. 1 (Hearing Summary). On or around September 2015, the Department received verification of Claimant's shelter expenses, which indicated that his monthly obligation was \$390. It should be noted that the above actions occurred subsequent to Claimant's hearing request dated [REDACTED]. See Exhibit A, pp. 16 and 19-24.

Claimant did not dispute that his monthly shelter obligation for June 2015 was \$390. Claimant testified that he put \$700 as his shelter obligation on [REDACTED] because he thought he had to include the total all of his utilities.

The Department verifies shelter expenses at application and when a change is reported. BEM 554 (October 2014), p. 14. If the client fails to verify a reported change in shelter, the Department removes the old expense until the new expense is verified. BEM 554,

p. 14. The Department verifies the expense and the amount for housing expenses, property taxes, assessments, insurance and home repairs. BEM 554, p. 14.

Acceptable verification sources include, but are not limited to a DHS-3688, Shelter Verification form. BEM 554, p. 14. A copy of this form will be sent to the FAP group and a task and reminder sent to the specialist when a change of address is done in Bridges. BEM 554, p. 14. The due date will be on the form. BEM 554, p. 14. The specialist must monitor for return of the form and take appropriate action if it is or is not returned. BEM 554, p. 14.

Additionally, other changes must be reported within 10 days after the client is aware of them. BAM 105 (April 2015), p. 11. These include, but are not limited to, changes in address and shelter cost changes that result from the move. BAM 105, p. 11. The Department acts on a change reported by means other than a tape match within 10 days of becoming aware of the change. BAM 220 (April 2015), p. 6. Changes which result in an increase in the household's benefits must be effective no later than the first allotment issued 10 days after the date the change was reported, provided any necessary verification was returned by the due date. BAM 220, p. 6.

Finally, verification means documentation or other evidence to establish the accuracy of the client's verbal or written statements. BAM 130 (October 2014), p. 1. The Department obtains verification when information regarding an eligibility factor is unclear, inconsistent, incomplete or contradictory. BAM 130, p. 1. The questionable information might be from the client or a third party. BAM 130, p. 1. The Department uses documents, collateral contacts or home calls to verify information. BAM 130, p. 1. The Department tells the client what verification is required, how to obtain it, and the due date. BAM 130, p. 3. The Department uses the DHS-3503, Verification Checklist (VCL), to request verification. BAM 130, p. 3. However, for FAP only, if there is a system-generated due date on the verification form such as a DHS-3688, Shelter Verification, a verification checklist is not required to be sent with the verification form. BAM 130, p. 3. The Department allows the client 10 calendar days (or other time limit specified in policy) to provide the verification that is requested. BAM 130, p. 6.

Based on the foregoing information and evidence, Claimant is eligible for \$390 in monthly housing expenses effective [REDACTED], ongoing. It is evident that there was a discrepancy in Claimant's reported monthly housing expenses. However, on [REDACTED], [REDACTED] when Claimant reported a different amount for his shelter obligation (See Exhibit A, p. 13), the Department should have sent Claimant a new verification request (i.e., DHS-3688, Shelter Verification). See BAM 130, p. 3 and BEM 554, p. 14. Policy states that the Department verifies shelter expenses at application and when a change is reported. BEM 554, p. 14. The Department eventually sent Claimant a new DHS-3688, Shelter Verification, on [REDACTED]; however, this was not in a timely manner in accordance with Department policy. See BAM 105, pp. 11 and BAM 220, p. 6. Thus, the Department should have not removed Claimant's old shelter expense from the FAP budget as it failed to properly verify Claimant's reported change in shelter expenses.

See BAM 105, p. 11; BAM 130, pp. 1, 3, and 6; and BEM 554, p. 14. Because the Department subsequently received verification of Claimant's housing expense, the Department will apply Claimant's housing expenses to be \$390 effective [REDACTED], ongoing.

Finally, Claimant's shelter budget showed that he was receiving the \$553 heat and utility (h/u) standard. See Exhibit B, p. 3. The Department testified that after receiving the new DHS-3688, Shelter Verification, the Claimant should not be eligible for the mandatory h/u standard. Claimant testified that he does have a room air conditioner (wall unit plus central) and that he is responsible for his electricity.

For groups with one or more SDV members, the Department uses excess shelter. See BEM 554, p. 1. In calculating a client's excess shelter deduction, the Department considers the client's monthly shelter expenses and the applicable utility standard for any utilities the client is responsible to pay. BEM 556 (July 2013), pp. 4-5. The utility standard that applies to a client's case is dependent on the client's circumstances. The mandatory h/u standard, which is currently \$553 and the most advantageous utility standard available to a client, is available only for FAP groups (i) that are responsible for heating expenses separate from rent, mortgage or condominium/maintenance payments; (ii) that are responsible for cooling (including room air conditioners) and verify that they have the responsibility for non-heat electric; (iii) whose heat is included in rent or fees if the client is billed for excess heat by the landlord, (iv) who have received the home heating credit (HHC) in an amount greater than \$20 in the current month or the immediately preceding 12 months, (v) who have received a Low-Income Home Energy Assistance Act (LIHEAP) payment or a LIHEAP payment was made on his behalf in an amount greater than \$20 in the current month or in the immediately preceding 12 months prior to the application/recertification month; (vi) whose electricity is included in rent or fees if the landlord bills the client separately for cooling; or (vii) who have any responsibility for heating/cooling expense (based on shared meters or expenses). BEM 554, pp. 16-20 and RFT 255, p. 1.

To show responsibility for heating and/or cooling expenses, acceptable verification sources include, but are not limited to, current bills or a written statement from the provider for heating/cooling expenses or excess heat expenses; collateral contact with the landlord or the heating/cooling provider; cancelled checks, receipts or money order copies, if current as long as the receipts identify the expense, the amount of the expense, the expense address, the provider of the service and the name of the person paying the expense; DHS-3688 shelter verification; collateral contact with the provider or landlord, as applicable; or a current lease. BEM 554, pp. 16-20. For groups that have verified that they own or are purchasing the home that they occupy, the heat obligation needs to be verified only if questionable. BEM 554, p. 16.

FAP groups not eligible for the mandatory h/u standard who have other utility expenses or contribute to the cost of other utility expenses are eligible for the individual utility standards that the FAP group has responsibility to pay. BEM 554, p. 19. These include

the non-heat electric standard (\$124 as of [REDACTED] if the client has no heating/cooling expense but has a responsibility to pay for non-heat electricity; the water and/or sewer standard (currently \$77) if the client has no heating/cooling expense but has a responsibility to pay for water and/or sewer separate from rent/mortgage; the telephone standard (currently \$34) if the client has no heating/cooling expense but has a responsibility to pay for traditional land-line service, cell phone service, or voice-over-Internet protocol; the cooking fuel standard (currently \$47) if the client has no heating/cooling expense but has a responsibility to pay for cooking fuel separate from rent/mortgage; and the trash removal standard (currently \$21) if the client has no heating/cooling expense but has a responsibility to pay for trash removal separate from rent/mortgage. BEM 554, pp. 20-24 and RFT 255, p. 1.

Sometimes the excess shelter deduction calculation will show more than one utility deduction. However, if the client is eligible for the \$553 mandatory h/u, that is all the client is eligible for. If he is not eligible for the mandatory h/u, he gets the sum of the other utility standards that apply to her case. BEM 554, pp. 15 and 20.

In this case, Claimant's FAP budget properly indicated that he is receiving the \$553 mandatory h/u standard. If the Department is arguing that Claimant is no longer eligible for the mandatory h/u standard based on receipt of the new shelter verification, then it can act on that reported change for future benefit periods. However, for purposes of this hearing, the undersigned is reviewing a FAP budget for June 2015 in which the Department provided Claimant with the \$553 mandatory h/u standard. As such, Claimant is eligible for the \$553 mandatory h/u standard effective [REDACTED]. See BEM 554, pp. 14-20.

It should be noted that policy does state that FAP groups who pay for cooling (including room air conditioners) are eligible for the h/u standard if they verify they have the responsibility to pay for non-heat electric. BEM 554, p. 15. Claimant indicates that he is responsible for cooling. Thus, Claimant would be eligible for the mandatory h/u standard in this instance, subject to verification in accordance with Department policy. See BEM 554, pp. 16-17 (acceptable verification sources).

### **DECISION AND ORDER**

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 improperly reduced Claimant's FAP allotment to \$34 effective [REDACTED].

Accordingly, the Department's FAP 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. Begin recalculating the FAP budget for [REDACTED], ongoing, in accordance with Department policy;
2. Apply \$390.00 for Claimant's housing expenses effective [REDACTED], in accordance with Department policy;
3. Issue supplements to Claimant for any FAP benefits he was eligible to receive but did not from [REDACTED] ongoing; and
4. Notify Claimant/AHR of its FAP decision.

**IT IS ALSO ORDERED** that Claimant's **State Emergency Relief (SER)** hearing request (dated [REDACTED]) is **DISMISSED**.



**Eric Feldman**  
Administrative Law Judge  
for Nick Lyon, Director  
Department of Health and Human Services

Date Signed: **9/29/2015**

Date Mailed: **9/29/2015**

EF / 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:

