

**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.: 15-012449
Issue No.: 3008
Case No.: ██████████
Hearing Date: September 30, 2015
County: Wayne-District 31

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 September 30, 2015, from Detroit, Michigan. Participants on behalf of Claimant included Claimant and ██████████, Claimant's authorized hearing representative (AHR). No representative from the Department participated in the hearing even after the front window was advised that the hearing, which was scheduled at 9:00 am, would proceed at 9:10 am.

ISSUE

Did the Department properly calculate Claimant's Food Assistance Program (FAP) benefits for June 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 resides with her husband and her minor child.
3. In connection with a SER application, the Department requested that Claimant verify her housing.
4. Claimant did not respond to the SER verification request.
5. The Department recalculated Claimant's FAP benefits and reduced the June 2015 benefits to \$16 monthly.

6. On July 13, 2015, Claimant filed her first request for hearing alleging that the Department had reduced her FAP benefits and removed her husband from her FAP group without proper notice.
7. On July 14, 2015, the Department sent Claimant a Quick Note notifying her that her FAP budget would be recalculated to include verifications she provided on July 13, 2015 which would increase her FAP benefits to \$235 effective August 1, 2015. The Quick Note also advised her that she would receive two manual Notices regarding actions taken to her FAP case on June 19, 2015 and July 13, 2015 (Exhibit A).
8. A Benefit Notice with a June 19, 2015 date was subsequently sent to Claimant advising her that her monthly FAP benefit amount was \$16 for June 19, 2015 to December 31, 2015. The Notice explained that the change was due to the fact that Claimant's husband was an ineligible student and she failed to provide verification of shelter expense. (Exhibit B.)
9. A Benefit Notice with a July 13, 2015 date was also sent to Claimant explaining that her FAP benefits would be \$235 effective August 1, 2015 ongoing (Exhibit F).
10. On July 16, 2015, Claimant filed a second hearing request concerning her FAP case and requesting that her FAP benefits continue at the amount she received prior to the negative action (Exhibit 1).

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.

Although the Department did not participate in the hearing, the evidence in this case shows that the Department reduced Claimant's FAP benefits effective June 1, 2015 due to (i) Claimant failing to verify her housing expenses in connection with a SER application and (ii) the removal of Claimant's husband from the FAP group due to ineligible student status.

According to the Department's hearing summary, the Department sent Claimant a verification checklist in connection with processing her SER application requesting verification of ownership of her home, actual bill with amount of home repair expenses, and proof that the home was in livable condition. When Claimant did not respond, the Department removed her housing expense from her June 2015 ongoing FAP budget. It also removed Claimant's husband as a FAP group member because it concluded that he was an ineligible student.

At the hearing, Claimant acknowledged receiving the SER verification checklist but explained that she did not respond to it because, during the SER application process, she became aware that she was not eligible for the SER assistance requested. She also testified that she had previously provided verification of her housing expenses, specifically a copy of a land contract showing that she was responsible for monthly housing expenses, including taxes, totaling \$575, and there was no change in the amount reported in the SER application.

The Department may request verification of shelter expenses when a change is reported and remove the old shelter expense when the client fails to verify a reported change in shelter. BEM 554 (October 2014), p. 14. In this case, there was no evidence presented by the Department that Claimant reported a shelter expense in the SER application inconsistent with the amount she had previously reported and verified in connection with her FAP budget. It is not even clear that the SER verification checklist requested verification of housing expenses. Because Claimant had verified her housing expenses and there was no evidence that she reported a different amount for housing expenses in the SER application or that the SER verification checklist requested housing expenses, the Department did not act in accordance with Department policy when it removed the housing expense from Claimant's June 2015 and July 2015 FAP budget.

At the hearing, Claimant testified that her husband was a student but that he was physically unable to work. A person who is age 18 through 49 and enrolled half-time or more in a vocational or technical school or a college or university is ineligible to be a FAP group member unless one of the exceptions in policy applies. BEM 245 (July 2014), pp. 3-4. An exception applies for an individual who is physically or mentally unfit for employment. BEM 245, p. 4.

In this case, Claimant alleged that her husband was physically unfit to work. The Department concluded that he was mentally or physically unfit to work (Exhibit G) and included him back in the FAP group in the August 2015 ongoing budget (Exhibit I). However, it did not present any evidence to support its position that it properly removed, or excluded, him from the FAP group in June 2015 or July 2015. Therefore, the Department failed to satisfy its burden of showing that it properly excluded Claimant's husband from her FAP group due to ineligible student status in June and July 2015.

The FAP net income budget for August 2015 provided by the Department shows that Claimant's housing expenses were included back in the budget and Claimant's husband was added back to the FAP group effective August 2015 (Exhibit I). The budget was reviewed with Claimant. The budget showed gross unearned income of \$1555 and a three person FAP group. Claimant agreed with the gross income figure and group size for the August 2105 budget.

A FAP group with a disabled member with only unearned income is eligible for the following deductions to gross income: a \$154 standard deduction for a group size of three, dependent care expenses, child support expenses, medical expenses in excess of \$35 for the disabled individuals in the group, and an excess shelter deduction based on monthly housing expenses and the applicable utility standard. BEM 554, p. 1; RFT 255 (October 2014), p. 1.

Claimant's budget showed a standard deduction of \$154, a medical deduction of \$70, no deductions for dependent care or child support, and a \$414 excess shelter deduction based on monthly housing expenses of \$525 and heat and utility standard of \$553. Claimant acknowledged that she had no day care or child support expenses, consistent with the budget. Claimant confirmed that her only monthly medical expense was the \$104.90 Part B Medicare premium that the Social Security Administration retained from her monthly Retirement, Survivors and Disability Insurance benefits. Because the \$105 expense, less the \$35 threshold, is \$70, the budget properly shows a \$70 medical expense deduction. Claimant confirmed that she was responsible for heating expenses for her home. As such, the excess shelter deduction budget properly shows the \$553 heat and utility standard, which is the most beneficial utility standard available to a client. BEM 554, 14-20; RFT 255, p. 1.

The excess shelter deduction for August 2015 also showed monthly housing expenses of \$525.57. Claimant disputed this amount, stating that she paid monthly expenses of \$575 on her land contract, which included taxes. Housing expenses include any payments, including interest, leading to ownership of the shelter occupied by the FAP group. BEM 554, pp. 12-13. Property taxes, state and local assessments, and insurance on the structure are allowable housing expenses. BEM 554, p. 13. In this case, the Department did not present any documentation supporting the \$525 shelter expense figure used in the excess shelter deduction calculation. Therefore, the Department has failed to satisfy its burden of showing that it acted in accordance with Department policy when it calculated the excess shelter deduction.

Claimant also argued that the Department failed to restore her FAP benefits to the amount she had been receiving prior to the negative action. When the Department receives a timely hearing request, which is one received within 10 days of the date the notice of case action was issued (or the following day, if the 10th day is a non-workday), the Department must continue to issue to the client the assistance authorized prior to the notice of negative action. BAM 600 (April 2015), p. 25. For FAP only, benefits are reinstated to the former level only if the benefit period has not expired. BAM 600, p. 24.

In this case, the Department acknowledged to Claimant in the July 14, 2015 Quick Note it sent her that it had not been able to send her written notice of the June 2015 FAP decrease and would send her two manually-created notices. Therefore, Claimant was not notified of the negative action concerning her June 2015 FAP benefits until July 14, 2015, when the Department manually issued and sent to her the Benefit Notice it dated June 19, 2015. Because the Department did not send notice of the decreased FAP benefits until July 14, 2015 and Claimant requested a hearing on July 15, 2015 with respect to this action, Claimant's hearing request was timely. Therefore, the Department did not act in accordance with policy when it failed to restore her June 2015 ongoing FAP benefits to the amount she was receiving prior to the negative action.

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 June 2015 ongoing and failed to reinstate her FAP benefits pending the hearing.

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. Reinstatement and issue to Claimant a FAP supplement for June 2015 and July 2015 in the amount she had previously received before benefits were reduced less the amount she actually received those months;
2. Recalculate Claimant's FAP budget for June 2015 ongoing to include Claimant's verified, allowable housing expenses and to add Claimant's husband as an eligible FAP group member;

3. Issue supplements to Claimant for any FAP benefits she was eligible to receive but did not from June 1, 2015 ongoing; and
4. Notify Claimant and the AHR in writing of its decision.



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

Date Signed: **10/8/2015**

Date Mailed: **10/8/2015**

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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