

**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.: 15-014128
Issue No.: 3008
Case No.: ██████████
Hearing Date: September 21, 2015
County: Wayne-District 19

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 September 21, 2015, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Health and Human Services (Department) included ██████████, Hearing Facilitator.

ISSUE

Did the Department properly calculate Claimant's Food Assistance Program (FAP) benefits for September 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.
2. Claimant is the sole member of his FAP group.
3. Claimant is disabled and receives gross monthly Retirement, Survivors and Disability Insurance (RSDI) income of \$1027 (Exhibit A).
4. The State pays Claimant's Part B Medicare premium (Exhibit A).
5. Claimant pays \$595 in monthly rent, which includes his heating and cooling expenses (Exhibit B).
6. Claimant is responsible for non-heat electricity and telephone.

7. The Department recalculated Claimant's FAP budget to remove an old medical expense.
8. On July 29, 2015, the Department sent Claimant a Notice of Case Action notifying him that his monthly FAP benefits were decreasing to \$27 effective September 1, 2015 (Exhibit D).
9. On July 30, 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.

Claimant disputed the reduction of his monthly FAP benefits from \$194 to \$27 for September 1, 2015 ongoing. At the hearing, the FAP net income budget for September 2015 ongoing used by the Department in calculating Claimant's FAP benefits (Exhibit C) was reviewed with Claimant. The budget showed gross monthly unearned income of \$1027, which Claimant confirmed.

The Department confirmed that Claimant received RSDI income based on a disability. Therefore, he is a senior/disabled/veteran (SDV) member of his FAP group. See BEM 550 (February 2014), pp 1-2. FAP groups with one SDV member and no earned income are eligible for the following deductions from the group's total income:

- Standard deduction of \$154.
- Dependent care expense.
- Excess shelter.
- Court ordered child support and arrearages paid to non-household members.
- Verified, out-of-pocket medical expenses for the SDV member(s) that exceed \$35.

BEM 554 (October 2014), p. 1; RFT 255 (October 2014), p. 1.

The budget showed the \$154 standard deduction applicable to Claimant's case. Claimant confirmed that he had no day care or child support expenses, consistent with the information on the budget.

The Department testified that Claimant had had an ongoing \$10,000 medical expense that had been improperly included in his FAP budget. An SDV member's allowable out-of-pocket medical expenses over \$35 that are not overdue are valid deductions to the member's FAP budget. BEM 554, p. 8. A client who does not have a 24-month benefit period may choose to budget a one-time-only medical expense for one month or average it over the balance of the benefit period. BEM 554, pp. 8-9. A client with a 24-month benefit period who incurs a one-time-only medical expense billed or due within the first 12 months of the benefit period must be given the option to budget it for one month, average it over the remainder of the first 12 months of the benefit period or average it over the remainder of the 24-month benefit period. BEM 554, p. 9.

In this case, Claimant's certification period runs from February 1, 2015 to January 31, 2017; therefore, he would be entitled to deduct the \$10,000 medical expense only if it was for expenses incurred on or after February 1, 2015, not overdue, and for allowable expenses. The Department testified that Claimant was not eligible for the \$10,000 medical expense, but it was unclear whether Claimant had not actually incurred the expense or, if he had, when it was incurred. However, the Department testified that removal of the expense had taken several months and had required a help desk ticket to effectuate. Based on the Department's testimony, it does not appear that the expense, if legitimate, was for an expense incurred on or after February 1, 2015. Therefore, the Department properly removed the expense from Claimant's ongoing FAP budget.

There was no evidence that Claimant had any other medical expenses at the time the Department calculated his FAP benefits. At the hearing, Claimant testified that he had brought a new bill for a medical expense, and he admitted that he had not submitted the bill prior to the hearing. While this expense may affect future FAP benefits, because it was not available to the Department at the time it recalculated Claimant's FAP budget and sent him the July 29, 2015 Notice of Case Action, it is not considered in this Hearing Decision determining whether the Department properly calculated the September 2015 ongoing FAP budgets. Claimant is advised that if he disagrees with the Department's processing of the new medical bill, he can request a new hearing in accordance with Department policy.

The final deduction available in calculating FAP benefits is the excess shelter deduction. The excess shelter deduction is based on (i) monthly shelter expenses and (ii) the applicable utility standard for any utilities the client is responsible to pay. BEM 556, pp. 4-5. The Department verified that Claimant's rent was \$595, as shown on the excess shelter deduction. (Exhibit C, p. 3).

The utility standard that applies to a client's case is dependent on the client's circumstances. A client is eligible for the \$553 mandatory h/u standard if (i) the client is responsible for, or contributes towards heating or cooling (including room air conditioner) expenses, (ii) the landlord bills the client for excess heating or cooling; (iii) the client has received a home heating credit (HHC) in an amount greater than \$20 in the application month or in the immediately preceding 12 months prior to the application month; (iv) the client received a low income home energy assistance payment (LIHEAP) payment or a LIHEAP payment was made on their behalf in an amount greater than \$20 in the application month or in the immediately preceding 12 months prior to the application month; or (v) the client otherwise has **any** responsibility for the heating/cooling expense. BEM 554, pp. 16-20.

Claimant's testimony at the hearing established that he did not meet any of the criteria for receipt of the \$553 mandatory h/u standard. If a client is not eligible for the mandatory h/u standard, the client may be eligible for mandatory *individual* standards for non-heat electric, water and/or sewer, telephone, cooking fuel, and/or trash removal, as applicable. BEM 554, pp. 20-23. In this case, Claimant confirmed that water, sewer, and trash removal were all included in his rent. Therefore, the only utilities Claimant was eligible for were telephone and non-heat electric. The non-heat electric standard is \$124 and the telephone standard is \$34, as shown on the excess shelter deduction. RFT 255, p. 1. Based on Claimant's \$595 monthly rent, the \$124 non-heat electric standard, and the \$34 telephone standard, Claimant's excess shelter deduction was properly calculated at \$317.

When Claimant's gross income of \$1027 is reduced by the \$154 standard deduction and the \$317 excess shelter deduction, Claimant's net income is \$556. Based on a FAP group size of one and net income of \$556, Claimant was eligible for gross monthly FAP benefits of \$27. RFT 260 (October 2014), p. 7. Therefore, the Department acted in accordance with Department policy when it calculated Claimant's monthly FAP benefits for September 2015 ongoing.

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 acted in accordance with Department policy when it calculated Claimant's FAP benefits.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.



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

Date Signed: **9/25/2015**

Date Mailed: **9/25/2015**

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]
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