

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

IN THE MATTER OF:

[REDACTED]

MAHS Reg. No.: 15-015486
Issue No.: 3008
Agency Case No.: [REDACTED]
Hearing Date: October 15, 2015
County: WAYNE-DISTRICT 49

ADMINISTRATIVE LAW JUDGE: Eric Feldman

HEARING DECISION

Following Petitioner'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 October 15, 2015, from Detroit, Michigan. The Petitioner was represented by [REDACTED], Petitioner; and her witness/friend, [REDACTED]. The Department was represented by [REDACTED], Eligibility Specialist.

ISSUE

Did the Department properly calculate Petitioner's FAP allotment in the amount of \$16 effective [REDACTED], 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. Petitioner is an ongoing recipient of FAP benefits. See Exhibit B, pp. 1-5.
2. On [REDACTED], the Department sent Petitioner a Notice of Case Action notifying her that her FAP benefits were approved for \$16 effective [REDACTED]. See Exhibit A, pp. 3-4 and 17-18.
3. On [REDACTED], Petitioner filed a hearing request, protesting the Department's action. Exhibit A, p. 2.

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.

Preliminary matter

Shortly after the commencement of the hearing, Petitioner disputed the amount of her FAP allotment from January of 2014, ongoing. However, the undersigned lacks the jurisdiction to address Petitioner's FAP allotment from January of 2014. For example, on [REDACTED], the Department sent Petitioner a Notice of Case Action notifying her that her FAP benefits decreased to \$16 effective [REDACTED], ongoing. See Exhibit A, pp. 13-16. Policy states that the client or Authorized Hearing Representative (AHR) has 90 calendar days from the date of the written notice of case action to request a hearing. BAM 600 (April 2015), p. 6. The request must be received in the local office within the 90 days. BAM 600, p. 6. Because Petitioner's request for hearing (dated [REDACTED]) was not received within ninety days of the disputed action (Notice of Case Action dated [REDACTED]), the undersigned lacks to jurisdiction to address this decrease.

Nevertheless, Petitioner acknowledged that she requested this hearing as result of receiving the Notice of Case Action dated [REDACTED], which notified her that her FAP benefits were approved in the amount of \$16 effective [REDACTED]. As such, the undersigned has the jurisdiction to address Petitioner's FAP allotment effective [REDACTED], ongoing. See BAM 600, pp. 1-6.

FAP allotment

It was not disputed that the certified group size is one and that Petitioner is a senior/disabled/disabled veteran (SDV) member. The Department presented the September 2015 FAP budget for review from the Notice of Case Action dated [REDACTED]. See Exhibit A, pp. 3-4.

First, the Department calculated Petitioner's gross unearned income to be \$767. See Exhibit A, p. 4. Petitioner's gross unearned income comprised of the following: \$753 in Social Security benefits; and \$14 in monthly State SSI Payments (SSP) (\$42 issued

quarterly). See BEM 503 (July 2015), pp. 28-33. Based on the above information, the Department properly calculated Petitioner's gross unearned income.

Then, the Department properly applied \$154 standard deduction for Petitioner's group size of one. See Exhibit A, p. 4 and RFT 255 (October 2014), p. 1.

Next, the Department calculated Petitioner's medical expenses to be zero. See Exhibit A, p. 4. During the hearing, Petitioner indicated that she had medical expenses for August 2015; however, she indicated that she did not have any medical expenses for September 2015, ongoing. For groups with one or more SDV member, the Department allows medical expenses that exceed \$35. BEM 554 (October 2014), pp. 1 and 8-12 (allowable medical expenses). Based on the above information, the Department properly calculated Petitioner's medical expenses to be zero. See BEM 554, pp. 1 and 8-12.

Moreover, the Department calculated Petitioner's housing costs to be \$227, which Petitioner disputed. See Exhibit A, p. 4. Petitioner testified that her rent increased to \$230 effective September 2015, ongoing. Upon receipt of her redetermination, Petitioner testified that she submitted verification showing that her rent increased to \$230 at her local office on or around [REDACTED]. In response, the Department could not rebut Petitioner's claim that she reported and verified that her rent increase to the Department on or around [REDACTED].

The Department verifies shelter expenses at application and when a change is reported. BEM 554, 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.

Additionally, other changes must be reported within 10 days after the client is aware of them. BAM 105 (July 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 (July 2015), p. 7. 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. 7.

Based on the above information and evidence, the Department failed to satisfy its burden of showing that it properly calculated Petitioner's housing expenses effective [REDACTED]. The Department failed to provide any evidence/testimony to show that it properly calculated Petitioner's housing expenses. In fact, Petitioner argued that she notified the Department of her rent increase in August of 2015, which would possibly affect her September 2015 FAP allotment. As such, the Department will

redetermine Petitioner's housing costs effective [REDACTED], ongoing, in accordance with Department policy. See BAM 220, p. 7 and BEM 554, p. 14.

Finally, Petitioner's FAP budget showed that she is not receiving the heat and utility (h/u) standard. See Exhibit A, p. 4 and RFT 255, p. 1. Instead, the FAP budget showed that Petitioner is only eligible for the \$34 telephone standard deduction. See Exhibit A, p. 4. During the hearing, Petitioner indicated that her rent includes all utilities (i.e., heat, electricity, water, trash, etc...).

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 she is not eligible for the mandatory h/u, she gets the sum of the other utility standards that apply to her case. BEM 554, pp. 15 and 20.

In this case, the evidence presented that Petitioner did not meet any of the above conditions to receive the h/u standard. See BEM 554, pp. 14-20. Therefore, Petitioner is only eligible for the telephone standard deduction in the amount of \$34. See Exhibit A, p. 4.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it calculated Petitioner's FAP benefits in the amount of \$16 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. Redetermine Petitioner's housing expenses effective [REDACTED], ongoing, in accordance with Department policy;
2. Begin recalculating the FAP budget for [REDACTED], ongoing, in accordance with Department policy;
3. Issue supplements to Petitioner for any FAP benefits she was eligible to receive but did not from September 1, 2015, ongoing; and

4. Notify Petitioner of its decision.



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

Date Signed: **10/16/2015**

Date Mailed: **10/16/2015**

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:

