

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

IN THE MATTER OF:



MAHS Reg. No.: 15-017340
Issue No.: 3008
Agency Case No.: [REDACTED]
Hearing Date: November 10, 2015
County: GENESEE-DISTRICT 6
(CLIO RD)

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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. After due notice, telephone hearing was held on November 10, 2015, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED]. [REDACTED] (Hearing Facilitator) represented the Department of Health and Human Services (Department).

ISSUE

Did the Department of Health and Human Services (Department) properly determine the Claimant's Food Assistance Program (FAP) eligibility?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Claimant is an ongoing Food Assistance Program (FAP) recipient.
2. The Claimant receives monthly Retirement, Survivors, and Disability Insurance (RSDI) in the gross monthly amount of \$[REDACTED].
3. On September 3, 2015, the Department notified the Claimant that he is eligible for a \$[REDACTED] monthly allotment of Food Assistance Program (FAP) benefits.
4. On September 11, 2015, the Department received the Claimant's request for a hearing protesting the amount of his allotment of Food Assistance Program (FAP) benefits.

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.

Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness. The Michigan Administrative Hearing System (MAHS) may grant a hearing for any of the following:

- Denial of an application and/or supplemental payments.
- Reduction in the amount of program benefits or service.
- Suspension or termination of program benefits or service.
- Restrictions under which benefits or services are provided.
- Delay of any action beyond standards of promptness.
- For FAP only, the current level of benefits or denial of expedited service. Department of Human Services Bridges Administrative Manual (BAM) 600 (April 1, 2015), pp 3-4.

A request for hearing must be in writing and signed by the claimant, petitioner, or authorized representative. Rule 400.904(1). Moreover, the Department of Human Services Bridges Administrative Manual (BAM) 600 (April 1, 2015), p. 6, provides in relevant part as follows:

The client or authorized hearing representative has 90 calendar days from the date of the written notice of case action to request a hearing. The request must be received anywhere in DHS within the 90 days.

The Claimant is an ongoing FAP recipient and has been receiving a \$ [REDACTED] monthly allotment of FAP benefits since February 1, 2015. No evidence was presented on the record that there has been any change to the Claimant's circumstances since February 1, 2015, but the Claimant has a right to a hearing to protest the current level of his FAP benefits. Therefore, the Claimant's eligibility for FAP benefits as of June 1, 2015, is relevant in this hearing.

The Claimant is an ongoing FAP recipient as a group of one. The Claimant receives monthly Retirement, Survivors, and Disability Insurance (RSDI) in the gross monthly amount of \$ [REDACTED]. The Claimant is eligible for Medicare and the Department pays his Medicare Part B premium. No evidence was presented during the hearing that the Claimant submitted any out of pocket medical expenses or child care expenses to the Department.

The Department is not including any monthly housing expenses in its determination of the Claimant's FAP eligibility. The Department's representative testified that the Claimant is not eligible for the standard heat and utility deduction that he is receiving because he had not provided any verification that he continues to pay for utilities at his home.

The Claimant testified that he was out of his home temporarily. The Claimant testified that he does not pay any mortgage or rent expenses. The Claimant testified that he has not paid his property taxes for several years. The Claimant testified that he has no utility expenses because vandals have stripped the home of the furnace, plumbing, and electrical wires. The Claimant testified that he heats his home with propane and uses bottled water.

The Department considers certain housing expenses when determining FAP eligibility.

Property taxes, state and local assessments and insurance on the structure are allowable expenses. Shelter expenses are allowed when billed. **The expenses do not have to be paid to be allowed.** Department of Health and Human Services Bridges Eligibility Manual (BEM) 554 (October 1, 2015), pp 12-13.

This Administrative Law Judge finds that the Department has failed to establish that the Claimant is not entitled to housing expenses even though he is unable or unwilling to pay these housing expenses.

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 determined the Claimant's Food Assistance Program (FAP) eligibility.

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. Allow the Claimant a ten-day period to provide the Department with verification of home ownership and monthly housing expenses that have been assessed.
2. Initiate a determination of the Claimant's eligibility for the Food Assistance Program (FAP) as of June 1, 2015.
3. Provide the Claimant with a Notice of Case Action (DHS-1605) describing the Department's revised eligibility determination.
4. Issue the Claimant any retroactive benefits he may be eligible to receive, if any.



Kevin Scully
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **11/12/2015**

Date Mailed: **11/12/2015**

KS/■

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:

