

**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.: 15-017492
Issue No.: 3008
Agency Case No.: [REDACTED]
Hearing Date: November 12, 2015
County: BERRIEN (DISTRICT 22)

ADMINISTRATIVE LAW JUDGE: Gary Heisler

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 November 12, 2015, from Lansing, Michigan. Participants on behalf of Claimant included herself and her daughter and authorized hearing representative [REDACTED]. Participants on behalf of the Department of Health and Human Services (Department) included Assistance Payments Worker [REDACTED] and Family Independence Manager [REDACTED]. During this hearing it was determined there is no Medical Assistance (MA) issue which Claimant needs resolved. That portion of this file is dismissed.

ISSUE

Did the Department properly reduce Claimant's Food Assistance Program (FAP) benefits beginning October 1, 2015?

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 was an ongoing recipient of Food Assistance Program (FAP) benefits.
2. On August 26, 2015, Claimant submitted a Mid-Certification Contact Notice (DHS-2240-A). Claimant reported her rent had increased.
3. On September 4, 2015, Claimant was sent a Notice of Case Action (DHHS-1605) which stated her Food Assistance Program (FAP) benefits would decrease beginning October 1, 2015.

4. On September 14, 2015, Claimant submitted a hearing request regarding her Food Assistance Program (FAP) benefits. In the hearing request Claimant raised the issue that she has cooling costs.
5. On September 24, 2015, the Department sent Claimant a Verification Checklist (DHHS-3503) requesting verification of receiving a Home Heating Credit.
6. On September 29, 2015, Claimant submitted verification of her rent expense increase. The verification also stated that Claimant “does have to pay for the cooling with electricity.”

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.

In this case, Claimant asserts that she is eligible for the full heat and utility standard. Bridges Eligibility Manual (BEM) 554 FAP Allowable Expenses and Expense Budgeting provides in part:

MANDATORY HEAT AND UTILITY STANDARD

The heat/utility (h/u) standard covers all heat and utility costs including cooling, **except** actual utility expenses, for example, installation fees etc.

Heating Separate from Housing Costs

A FAP group which has a heating expense or contributes to the heating expense separate from rent, mortgage or condominium/maintenance payments must use the h/u standard.

Cooling Separate from Housing Costs

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.

Heat Included in Rent or Fees

FAP groups whose heat is **included** in their rent or fees are not eligible for the h/u standard, **unless** they are billed for **excess heat** payments from their landlord.

Electricity Included in Rent or Fees

FAP groups whose electricity is **included** in their rent or fees are not eligible for the h/u standard **unless** their landlord bills them separately for excess cooling.

MANDATORY INDIVIDUAL STANDARDS

FAP groups not eligible for the h/u standard who have other utility expenses or contribute to the cost of other utility expenses are eligible for the individual utility standards. Use the individual standard for each utility the FAP group has responsibility to pay. Do **not** prorate the utility standard even if the expense is shared.

Non-Heat Electric Standard

A FAP group which has no heating/cooling expense but has a responsibility to pay for non-heat electricity separate from rent/mortgage or condo/maintenance fees must use the non-heat electric standard. The standard covers **only** non-heat electric.

The parties agree that Claimant's heat is included in her rent and she pays her own electric bill. Claimant argues that her cooling costs are contained in her electric charges so she is eligible under the policy provision for "Cooling Separate from Housing Costs".

The Department argues Claimant is not eligible because she is already paying for her electric and is not making a separate payment for cooling. There is no policy section which supports this position. There is a policy section that holds "FAP groups whose electricity is **included** in their rent or fees are not eligible for the h/u standard **unless** their landlord bills them separately for excess cooling." That section is not applicable to Claimant because her electric is not included in her rent.

The Department argued that since Claimant is eligible for the non-heat electric standard, she cannot be eligible for the full standard due to cooling costs. The plain language in the policy provision for "Cooling Separate from Housing Costs" is a direct contradiction to that position. The provision states "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." It does not say "groups who are billed separate for electricity used for cooling".

Claimant's hearing request informed the Department that she had cooling costs. The Department then received verification that Claimant had to pay for her own electric

cooling from Claimant's Rental Agent on September 29, 2015. In accordance with Bridges Administration Manual (BAM) 220 the Department received the required information before the negative action took effect on October 1, 2015.

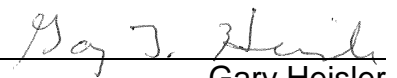
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with Department policy when it reduced Claimant's Food Assistance Program (FAP) benefits beginning October 1, 2015.

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. Re-determine Claimant's Food Assistance Program (FAP) eligibility from October 1, 2015, in accordance with Department policy.
2. Issue Claimant a current Notice of Case Action (DHHS-1605) containing the corrected eligibility determination.



Gary Heisler
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **11/17/2015**

Date Mailed: **11/17/2015**

GFH / 

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:

