

**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.: 15-019597
Issue No.: 3008
Agency Case No.: [REDACTED]
Hearing Date: December 1, 2015
County: Saginaw

ADMINISTRATIVE LAW JUDGE: Vicki Armstrong

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 3-way telephone hearing was held on [REDACTED], from Lansing, Michigan. Claimant personally appeared and testified. The Department of Health and Human Services (Department) was represented by Hearing Facilitator [REDACTED].

ISSUE

Did the Department properly decrease Claimant's Food Assistance Program (FAP) benefits?

FINDINGS OF FACT

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

1. On [REDACTED], Claimant moved to [REDACTED]. (Dept Ex. A, p 27).
2. On [REDACTED], Claimant submitted her lease to the Department verifying her move. Rent was \$ [REDACTED] and per the lease she only paid electric, not heat. (Dept Ex. A, pp 12-15, 27, 30).
3. On [REDACTED], the Department issued a Notice of Case Action to Claimant informing her that because her shelter expenses had changed, her FAP allotment was decreasing to \$ [REDACTED] a month effective [REDACTED]. (Dept Ex. A, pp 3-6).
4. On [REDACTED] Claimant submitted a Request for Hearing protesting the reduction in FAP benefits. (Dept Ex. A, pp 28-29).

5. A Pre-Hearing Conference was scheduled by the Department with Claimant for [REDACTED]. (Dept Ex. A, p 1). Claimant credibly testified she was unable to attend.

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.

For FAP purposes, all earned and unearned income available to Claimant is countable. Earned income means income received from another person or organization or from self-employment for duties that were performed for compensation or profit. Unearned income means all income that is not earned, including but not limited to funds received from the Family Independence Program (FIP), State Disability Assistance (SDA), Child Development and Care (CDC), Medicaid (MA), Social Security Benefits (RSDI/SSI), Veterans Administration (VA), Unemployment Compensation Benefits (UCB), Adult Medical Program (AMP), alimony, and child support payments. The amount counted may be more than the client actually receives because the gross amount is used prior to any deductions. BEM 500.

Claimant's only income in this case was from Retirement Survivors Disability Insurance (RSDI) in the amount of \$[REDACTED] of unearned income at the time relevant to this matter. Claimant credibly testified that she did not receive \$[REDACTED] a month, but only \$[REDACTED] a month due to a portion being withheld as a result of an overissuance.

Sometimes [RSDI] benefits are reduced because of a previous overpayment. BEM 503, p 28 (10/1/2015). In such cases, the reduced amount is the gross amount. BEM 503, p 28.

The Hearing Representative stated she was unaware of the garnishment because there had not been a Pre-Hearing Conference. Upon learning of the garnishment, and reviewing policy on the record, the Department agreed to verify the amount of the garnishment and do a redetermination of Claimant's FAP allotment.

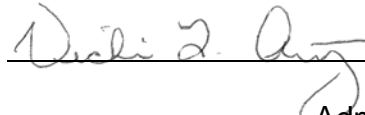
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with Department policy when it failed to exclude the garnishment as countable unearned income in accordance with policy.

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. Verify the garnishment and redetermine Claimant's FAP allotment.



Vicki Armstrong
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

[REDACTED]

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:

