

**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.: 15-020656
Issue No.: 3008
Agency Case No.: [REDACTED]
Hearing Date: December 21, 2015
County: MACOMB-DISTRICT 12
(MT CLEMENS)

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 December 21, 2015, from Detroit, Michigan. Petitioner was represented by her daughter and authorized hearing representative (AHR), [REDACTED]. Petitioner also appeared and testified. Petitioner's grandson, [REDACTED], was present at the hearing but did not participate. The Department of Health and Human Services (Department) was represented by [REDACTED], Eligibility Specialist/Hearing Facilitator.

ISSUE

Did the Department properly calculate Petitioner'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. Petitioner was an ongoing recipient of FAP benefits.
2. Petitioner received a home heating credit (HHC) in excess of \$20 in March 2015.
3. On [REDACTED], the Department received Petitioner's hearing request disputing the Department's reduction of her FAP benefits and failure to consider her HHC.

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.

Petitioner disputed the reduction in her FAP benefits and the Department's failure to consider her HHC in calculating her FAP benefit amount. In determining the FAP benefits a client is eligible to receive, the Department calculates the client's net income. BEM 556 (July 2013), p. 5. In calculating a client's FAP net income, a client is eligible for an excess shelter deduction from her adjusted gross income. BEM 554 (October 2015), p. 1. A client's excess shelter deduction requires consideration of the client's (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 utility standard that applies to a client's case is dependent on the client's circumstances. Department policy provides that an individual who is responsible for heating and/or cooling expenses is eligible for the heat and utility (h/u) standard, the most favorable utility standard available to a client, which was \$553 through September 30, 2015 and \$539 effective October 1, 2015. BEM 554, pp. 14-20; RFT 255 (October 2014 and October 2015), p. 1. At redetermination, FAP groups who received a HHC in an amount greater than \$20 in the certification month or in the 12 months immediately preceding the certification month are eligible for the mandatory h/u standard. BEM 554, p. 18. The Department must verify receipt of the HHC at redetermination. BEM 554, p. 18. Acceptable verification sources include a Bridges inquiry (HHC Approved Client Inquiry). BEM 554, p. 18.

In this case, the Department testified that it did not apply the \$539 h/u standard until the December 2015 FAP budget because Petitioner had failed to verify that she received a HHC in excess of \$20 in 2015 and the Department verified that information itself in December 2015. At the hearing, the Department acknowledged that it had access to verification of Petitioner's receipt of an HHC in excess of \$20 and was not required to have Petitioner supply this proof. In fact, it testified that its records showed that Petitioner received a HHC in excess of \$20 in April 2014 and in March 2015. Therefore, the Department did not act in accordance with Department policy when it failed to apply

the h/u standard in calculating Petitioner's FAP benefits until December 2015 on the basis that Petitioner failed to verify her HHC.

The AHR argues that Petitioner was eligible for a FAP supplement to at least [REDACTED], [REDACTED] based on the Department's failure to apply the h/u standard in calculating Petitioner's FAP benefits. The Department acknowledged that its failure to apply the h/u standard to Petitioner's FAP budget was an agency error. A client is eligible for a prior month FAP supplement when an agency error in a prior month caused an underissuance. BAM 406 (July 2013), p. 3.

In this case, the Department established that Petitioner's certification period ran from [REDACTED] to [REDACTED]. Because verification of the HHC in excess of \$20 would be required in connection with the redetermination and the Department could verify Petitioner's HHC status itself, the Department did not act in accordance with Department policy when it failed to apply the h/u standard to Petitioner's case beginning [REDACTED], the start date of the current certification period. See BAM 406, p. 3.

There was also an issue presented at the hearing concerning the shelter expenses used by the Department in calculating Petitioner's excess shelter deduction. Petitioner contended that her rent increased from \$203 to \$238 effective [REDACTED], and that she reported this change to the Department in October 2015 or November 2015. Assuming the change was reported in November 2015, the earliest the change could affect Petitioner's FAP budget is December 2015. BAM 220 (October 2015), p. 7. Therefore, the Department acted in accordance with Department policy when it included the updated rent in the December 2015 budget. However, the Department testified that \$228 rather than \$238 was being used in the December 2015 budget and did not present any evidence to show what information it relied upon to establish that shelter expense. Therefore, the Department failed to satisfy its burden of showing that it used the correct rent amount in calculating the excess shelter deduction for December 2015, ongoing.

At the hearing, the Department testified as to the remaining information used to calculate Petitioner's FAP benefits for December 2015, ongoing. Petitioner confirmed that her gross monthly income was \$829, consisting of \$364 in gross monthly Retirement, Survivors and Disability Insurance (RSDI) income and \$465.35 in gross monthly railroad pension. The Department properly considered this unearned income in calculating FAP benefits. See BEM 503 (October 2015), pp. 26-28.

Because Claimant is over age 65, she is a senior/disabled/veteran (SDV) member of her FAP group. See BEM 550 (February 2014), pp 1-2. In addition to the excess shelter deduction, deductions are available to Petitioner for any dependent care expenses, court-ordered child support paid to non-household member, and verified out-of-pocket medical expenses for the SDV member exceeding \$35. BEM 554, p. 1. Petitioner testified that she had no dependent care or child support expenses. She also testified that she did not have any medical expenses, even though the Department

testified that it was budgeting \$70 for a medical expense deduction for [REDACTED], [REDACTED] ongoing. Because there were no verified medical expenses in excess of \$35, the Department did not act in accordance with Department policy to the extent it applied a medical expense deduction in calculating Petitioner's FAP benefits.

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 apply the h/u standard in calculating Petitioner's FAP benefits for [REDACTED] ongoing and applied a medical expense deduction for December 2015 ongoing, and that it failed to satisfy its burden of showing that it acted in accordance with Department policy when it applied \$228 for shelter expenses in the December 2015 ongoing FAP budget.

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. Recalculate Petitioner's FAP benefits for [REDACTED], ongoing, to include the h/u standard;
2. Remove the medical expense deduction from the [REDACTED] ongoing FAP budget;
3. Determine Petitioner's housing expenses for December 2015 ongoing and apply verified housing expenses to the [REDACTED] ongoing FAP budget;
4. Issue supplements to Petitioner for any FAP benefits she was eligible to receive but did not from [REDACTED], ongoing; and
5. Notify Petitioner in writing of any FAP supplement she is eligible to receive.



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

Date Signed: **12/23/2015**

Date Mailed: **12/23/2015**

ACE / 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:

