

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

IN THE MATTER OF:

████████████████████
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Reg. No.: 15-001197
Issue No.: 3008
Case No.: ██████████
Hearing Date: February 26, 2015
County: MACOMB-DISTRICT 36
(STERLING HTS)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

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, a telephone hearing was held on February 26, 2015, from Detroit, Michigan. Participants on behalf of Claimant included Claimant, ██████████ ██████████; and Claimant's witness/Social Worker, ██████████. There were no participants on behalf of the Department of Human Services (Department or DHS) present for the hearing.

ISSUE

Did the Department properly calculate Claimant's Food Assistance Program (FAP) allotment effective October 8, 2014?

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 October 8, 2014, Claimant applied for FAP benefits. See Exhibit A, p. 7.
2. From October 8, 2014, to October 31, 2014, Claimant received ██████ in FAP assistance. See Exhibit A, p. 7.
3. From November 1, 2014, to November 30, 2014, Claimant received ██████ in FAP assistance. See Exhibit A, p. 7.
4. From December 1, 2014, to December 31, 2014, Claimant received ██████ in FAP assistance. See Exhibit A, p. 7.

5. On December 6, 2014, the Department sent Claimant a Notice of Case Action notifying her that her FAP benefits decreased to \$[REDACTED] effective January 1, 2015, ongoing. See Exhibit A, pp. 9-10. However, Claimant's Eligibility Summary indicated she received [REDACTED] in FAP assistance effective January 1, 2015, ongoing. See Exhibit A, p. 7.
6. On January 14, 2015, Claimant filed a hearing request protesting her FAP allotment. See Exhibit A, p. 1.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), Department of Human Services Reference Tables Manual (RFT), and Department of Human Services Emergency Relief Manual (ERM).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food Stamp Act of 1977, 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 Family Independence Agency) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001 to .3015.

Preliminary matters

First, the Department failed to contact the Michigan Administrative Hearing System (MAHS) to indicate that it is participating in the hearing. However, Claimant did contact MAHS that she is participating in the hearing. As such, the hearing proceeded with only the Claimant present.

Second, on January 14, 2015, Claimant filed a hearing request protesting her FAP allotment. See Exhibit A, p. 1. Claimant acknowledged that she is disputing the amount of her FAP allotment effective October 8, 2014, the date of her application, ongoing. See Exhibit A, p. 7. It should be noted that Claimant's hearing request does dispute her FAP allotment for the time period of October 2014, ongoing. See Exhibit A, p. 1. Furthermore, Claimant testified that she believed she received the Notice of Case Action (case action) approving her application in late October 2014. This is supported by the fact that the Department certified her October 2014 benefits on October 24, 2014 (late October). See Exhibit A, p. 7.

BAM 600 states that the client or authorized hearing representative has 90 calendar days from the date of the written notice of case action (case action) to request a hearing. See BAM 600 (January 2015), pp. 4-6.

Based on the above information, this ALJ has the jurisdiction to address Claimant's dispute with her FAP benefits from October 8, 2014, ongoing. If Claimant received her

case action approving her initial application in late October 2014, then her request for hearing dated January 14, 2015, is within the ninety days to contest the Department's action. See BAM 600, pp. 4-6.

FAP benefits from October 8, 2014 to December 31, 2014

The local office and client or Authorized Hearing Representative (AHR) will each present their position to the ALJ, who will determine whether the actions taken by the local office are correct according to fact, law, policy and procedure. BAM 600, p. 35. Both the local office and the client or AHR must have adequate opportunity to present the case, bring witnesses, establish all pertinent facts, argue the case, refute any evidence, cross-examine adverse witnesses, and cross-examine the author of a document offered in evidence. BAM 600, p. 35. The ALJ determines the facts based only on evidence introduced at the hearing, draws a conclusion of law, and determines whether DHS policy was appropriately applied. BAM 600, p. 37.

In this case, the Department failed to present any FAP budgets for the time period of October 8, 2014 to December 31, 2014. Because the Department failed to present any FAP budgets for this time period, this ALJ is unable to determine if whether the Department properly calculated Claimants FAP allotment for October 8, 2014, to December 31, 2014. As such, the Department failed to satisfy its burden of showing that it properly calculated Claimant's FAP benefits for October 8, 2014 to December 31, 2014. See BAM 600, pp. 35-37.

FAP benefits from January 1, 2015, ongoing

On December 6, 2014, the Department sent Claimant a Notice of Case Action notifying her that her FAP benefits decreased to [REDACTED]0 effective January 1, 2015, ongoing. See Exhibit A, pp. 9-10. However, Claimant testified that she received a subsequent notice (which was not part of the hearing packet) notifying her that her FAP benefits increased to [REDACTED] (one dollar increase) effective January 1, 2015. Claimant's Eligibility Summary confirmed that she received [REDACTED] in FAP assistance effective January 1, 2015, ongoing. See Exhibit A, p. 7.

Claimant indicated her certified group size is one and that she is a senior/disabled/disabled veteran (SDV) member. The Department presented the January 2015 FAP budget for review from the Notice of Case Action dated December 6, 2014. See Exhibit A, pp. 9-10. The Department also presented Claimant's FAP budget for March 2015. See Exhibit A, pp. 3 and 8. Even though this budget is for a different benefit period, this budget appeared to be updated as to reflect Claimant increase to [REDACTED]. See Exhibit A, pp. 3 and 8. As such, this ALJ reviewed both budgets during the hearing.

The Department calculated a gross unearned income amount of [REDACTED], which Claimant disputed. Exhibit A, pp. 3 and 10. Claimant testified that received [REDACTED] in

Supplemental Security Income (SSI) plus [REDACTED] in monthly State SSI Payments (SSP) (\$42 issued quarterly); this results in approximate unearned income amount of [REDACTED]

The Department counts the gross amount of current Social Security Administration (SSA)-issued SSI as unearned income. BEM 503 (July 2014), p. 32. Whenever an SSA-issued independent living or household of another payment is budgeted, the Department counts the corresponding monthly SSP benefit amount as unearned income. BEM 503, p. 33.

Based on the foregoing information, the Department failed to satisfy its burden of showing that it properly calculated Claimant's unearned income. The Department failed to be present at the hearing to rebut Claimant's testimony that it properly calculated her unearned income. As such, the Department will recalculate Claimant's FAP budget effective January 1, 2015, ongoing.

Then, the Department properly applied the [REDACTED] standard deduction applicable to Claimant's group size of one. See RFT 255 (October 2014), p. 1 and see Exhibit A, pp. 3 and 10.

Next, the Department calculated Claimant's medical expenses (deduction) to be zero. Claimant testified that her medical expenses are approximately \$[REDACTED] a month. For groups with one or more SDV member, the Department allows medical expenses that exceed [REDACTED] BEM 554 (October 2014), p. 1. The Department estimates an SDV person's medical expenses for the benefit period. BEM 554, p. 11. The expense does not have to be paid to be allowed. BEM 554, p. 11. The Department allows medical expenses when verification of the portion paid, or to be paid by insurance, Medicare, Medicaid, etc. is provided. BEM 554, p. 11. The Department allows only the non-reimbursable portion of a medical expense. BEM 554, p. 11. The medical bill cannot be overdue. BEM 554, p. 11. Based on this information, Claimant would not be eligible for the medical expenses deduction because her expenses do not exceed [REDACTED]

The Department then presented Claimant's Excess Shelter Deduction budget (shelter budget), which showed her housing expenses to be [REDACTED]. See Exhibit A, p. 8. However, Claimant's Notice of Case Action indicated her housing expenses were [REDACTED] See Exhibit A, p. 10. It appears that the Department increased the housing expense by two dollars and this was most likely the reason why Claimant's FAP benefits increased one dollar for January 2015, ongoing. Claimant testified her housing expense were [REDACTED] for January 2015 and [REDACTED] for February 2015, ongoing.

For groups with one or more SDV member, the Department uses excess shelter deduction. See BEM 554, p. 1. The Department allows a shelter expense when the FAP group has a shelter expense or contributes to the shelter expense. BEM 554, p. 12. Housing expenses include rent, mortgage, a second mortgage, home equity loan, required condo or maintenance fees, lot rental or other payments including interest leading to ownership of the shelter occupied by the FAP group. BEM 554, pp. 12-13.

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.

Based on the above information, it appears that the Department properly calculated Claimant's housing costs in the amount of [REDACTED] for January 2015. However, there is a discrepancy as shown above because the Notice of Case Action indicated housing expenses were [REDACTED]. See Exhibit A, p. 10. Because the Department failed to be present at the hearing, it failed its burden to show that it properly calculated Claimant's housing expenses. As such, the Department will recalculate Claimant's housing costs in accordance with Department policy. See BEM 554, pp. 1 and 12-14.

Finally, Claimant's FAP budgets indicated that she did not receive the mandatory heat and utility (h/u) standard in the amount of [REDACTED]. See Exhibit A, pp. 8 and 10. Instead, the Department provided Claimant with the electric standard of [REDACTED] and telephone standard of [REDACTED]. See Exhibit A, pp. 8 and 10.

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 [REDACTED] 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 [REDACTED] 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 her behalf in an amount greater than [REDACTED] 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; 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 (████ as of October 1, 2014) 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 █████ 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 █████ 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 █████ 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 █████) 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; 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 █████ 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 his case. BEM 554, pp. 15 and 20.

During the hearing, Claimant indicated that her heating expense is included in her rent; therefore, she would not be eligible for h/u standard based on heating being separate from her rent. See BEM 554, p. 16. Claimant also agreed that she does have electric and telephone expenses. Moreover, Claimant testified that she pays for her cooling (she has a wall air conditioner) because the use of her air conditioner goes towards her non-heat electric bill. 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. BEM 554, p. 16. Acceptable verification sources include, but are not limited to: current bills or a written statement from the provider for electric expenses or other verification sources listed in BEM 554. See BEM 554, p. 17. Claimant is possibly eligible for the h/u standard because she pays for her cooling (including room air conditioners). BEM 554, p. 16. Again, the Department failed to be present at the hearing to show that it properly calculated Claimant's excess shelter deduction, including whether or not she is eligible for the mandatory h/u standard. As such, the Department will redetermine Claimant's eligibility for the mandatory h/u standard in accordance with Department policy. See BEM 554, pp. 14-20 and RFT 255, p. 1.

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 Claimant's FAP benefits effective October 8, 2014, ongoing.

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. Begin recalculating the FAP budget for October 8, 2014, ongoing, in accordance with Department policy;
2. Issue supplements to Claimant for any FAP benefits she was eligible to receive but did not from October 8, 2014, ongoing; and
3. Notify Claimant of its FAP decision in accordance with Department policy.


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

Date Signed: **2/27/2015**

Date Mailed: **2/27/2015**

EJF/tm

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 party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (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:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]