

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-003602
Issue No.: FAP
Case No.: [REDACTED]
Hearing Date: April 15, 2015
County: KENT-DISTRICT 1 (FRANKLIN)

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 April 15, 2015, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED]. Participants on behalf of the Department of Health and Human Services (Department) included [REDACTED], Family Independence Manager, and [REDACTED] Eligibility Specialist.

ISSUE

Did the Department properly determine the amount of Claimant's Food Assistance Program (FAP) monthly allotment?

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 is an ongoing recipient of FAP benefits.
2. On December 28, 2014, the Department re-calculated Claimant's FAP budget due to a cost of living (COLA) increase with Social Security Administration (SSA) issued benefits.
3. When re-calculating the FAP budget, the Department discovered and corrected an error regarding including both the full heat and utility standard as well as some individual utility standards in the FAP budget and applied the current policy to determine the allowable utility expenses.
4. On December 28, 2014, a Notice of Case Action was issued to Claimant stating the FAP monthly allotment would decrease to \$ [REDACTED] effective February 1, 2015.
5. On March 6, 2015, Claimant filed a hearing request contesting the Department's action.

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.

BEM 550, 554, and 556 address the FAP budget. The Department budgets the entire amount of earned and unearned countable income. Every case is allowed the standard deduction shown in Reference Tables Manual (RFT) 255. BEM 550 (February 1, 2014), p.1. A shelter expense is allowed when the FAP group has a shelter expense or contributes to the shelter expense. BEM 554 (October 1, 2014) p. 12. However, if shelter vendor payments are made on behalf of a FAP group, the Department is to subtract the vendor payment from the total shelter amount to determine the allowable shelter expense. BEM 554, p. 13 and BEM 503 (July 1, 2014), p. 16. Heat and utility expenses can also be included as allowed by policy. Effective May 1, 2014, when processing applications, redeterminations, or when a change is reported clients are not automatically allowed the heat and utility (h/u) standard. The Department now includes only the utilities for which a client is responsible to pay. 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. 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. 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. FAP groups that qualify for the full h/u standard do not receive any other individual utility standards. BEM 554, pp. 14-20.

In this case, Claimant's FAP budget was re-calculated due to a COLA increase for his SSA benefit income. The Department explained that when they re-calculated the FAP budget, an error was discovered. The Department had previously been including both the full heat and utility standard as well as some individual utility standards in the FAP budget. This error was corrected. Further, the Department applied the current policy to determine the allowable utility expenses. Claimant's heat is included in rent, therefore, only the individual utility standards for the utility expenses he is responsible to pay were budgeted. It is also noted that the Department budgeted only the portion of the rent Claimant is responsible to pay, rather than the full rent amount.

Claimant asserted the full rent amount \$ [REDACTED] should have been budget and testified this rent is high because heat is included in the rent. However, it was uncontested that

Claimant receives assistance with rent. A Notice of Rent Determination indicates that with Section 8 assistance, Claimant is only responsible to pay \$ [REDACTED] and the HAP amount is \$ [REDACTED]. In accordance with the above cited BEM 554 and 503 policy, the Department properly budgeted only \$ [REDACTED] for a shelter expense and did not include the vendor payment being made on Claimant's behalf.

Claimant also testified that he receives a home heating tax credit. However, this was not reported on the July 29, 2014, Redetermination form Claimant completed and submitted to the Department. There was no other evidence that Claimant otherwise reported receiving a home heating tax credit to the Department before the FAP budget was re-calculated in December 2014. Accordingly, at that time the Department could not consider the home heating tax credit as a basis for allowing the full heat and utility standard to be included in the FAP budget instead of the individual utility standards. (See BEM 554, p. 18, which addresses potential eligibility for the full heat and utility standard based on receipt of the home heating credit.) The Department testified they will consider this for determining Claimant's ongoing FAP eligibility because it was reported during the hearing proceedings.

This ALJ has no authority to change or make exceptions to the Department's policy. The Department properly re-determined Claimant's ongoing eligibility for FAP with the change in his SSA benefit income. The Department properly corrected the error with including both the full heat and utility standard as well as individual utility standards. The Department properly applied the current BEM 554 policy to only allow the individual utility standards for the utility expenses Claimant is actually responsible to pay based on the information available to the Department at that time. Further, the Department properly did not include the vendor payment being made on Claimant's behalf in the allowed shelter expense. Overall, the evidence establishes that the Department properly re-determined the amount of Claimant's FAP monthly allotment based on the information available at that time.

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 acted in accordance with Department policy when it determined Claimant's FAP monthly allotment.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.



Colleen Lack
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **4/24/2015**

Date Mailed: **4/24/2015**

CL/hj

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:

