

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

IN THE MATTER OF:

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██████████

Reg. No.: 15-006483
Issue No.: 3008
Case No.: ██████████
Hearing Date: May 28, 2015
County: Wayne-District 57 (Conner)

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 May 28, 2015, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Health and Human Services (Department) included ██████████ ██████████, Eligibility Specialist, and ██████████ ██████████, Family Independence Specialist.

ISSUE

Did the Department properly calculate Claimant's Food Assistance Program (FAP) benefits for April 1, 2015, ongoing?

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 FAP benefits.
2. In connection with processing a State Emergency Relief application, the Department realized it had not budgeted Claimant's household's income in the FAP budget.
3. On February 26, 2015, the Department sent Claimant a Notice of Case Action notifying her that effective April 1, 2015, her FAP benefits were decreasing to \$16 monthly (Exhibit A).
4. On April 21, 2015, Claimant filed a request for hearing disputing the Department's actions.

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.

Claimant requested a hearing disputing the reduction of her monthly FAP benefits to \$16. The Department testified that the reduction was due to the inclusion of Claimant's husband's earned income that had not previously been included in the calculation of Claimant's benefits and the change in shelter expenses due to changes in policy. The Department presented a FAP net income budget showing the calculation of Claimant's monthly FAP benefits of \$16 (Exhibit B). Although the budget indicated that it was for February 2015, the Department testified that, in accordance with the February 26, 2015 Notice of Case Action, Claimant's FAP monthly benefits were not decreased to \$16 until April 2015. Claimant confirmed on the record the decrease in her FAP benefits did not become effective until April 2015.

The budget was reviewed with Claimant at the hearing. Claimant confirmed that, consistent with the FAP budget, there were two members in her FAP group: her and her husband. BEM 212 (July 2014), p. 1 (providing that married individuals living together must be in the same FAP group). Because Claimant she is eligible for Supplement Security Income (SSI), she is disabled and considered a senior/disabled/veteran (SDV) member of her FAP group. BEM 550 (February 2014), pp. 1-2. Claimant confirmed that her monthly rent was \$302, as shown on her excess shelter deduction budget. Based on her testimony at the hearing, she was not eligible for the mandatory heat and utility standard or any individual utility standard, as reflected on the excess shelter deduction. BEM 554 (October 2014), pp. 14-23. Claimant confirmed that she did not have any dependent care, child support, or medical expenses. Therefore, the budget properly showed \$0 for those deductions. Based on Claimant's FAP group size of 2, she was eligible for a standard deduction of \$154, as shown on the budget. RFT 255 (October 2014), p. 1.

The issue at the hearing concerned the calculation of Claimant's household's income and application of the earned income deduction to the household's earned income. The budget shows income totaling \$2230 broken down as follows: (1) \$1378 in earned

income eligible for the earned income deduction; (2) \$430 of earned income ineligible for the earned income deduction, and (3) \$422 in countable unearned income.

The Department testified that the \$1378 in earned income was Claimant's husband's gross monthly earned income from his employment at Guardian Security based on the following paystubs: (i) \$372 paid on January 30, 2015; (ii) \$372 paid on February 6, 2015; (iii) \$287.50 paid on February 13, 2015; and (iv) \$291.88 paid on February 20, 2015. Claimant acknowledged that the fluctuations in her husband's income as shown on the paystubs described were consistent with the usual fluctuations in his weekly income. Claimant's husband's average weekly pay, based on the paystubs the Department testified it relied upon, multiplied by 4.3 in accordance with policy, does not result in \$1378. The Department did not present into evidence all of the paystubs it testified it considered (Exhibit C). Therefore, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it calculated Claimant's husband's earned income from Guardian.

The budget also showed earned income "ineligible for earned income deduction." At the hearing, the Department was unable to explain the basis for this income. However, Claimant testified that her husband also had a part-time job at [REDACTED] for which he was paid \$200 biweekly. Claimant's husband's \$200 biweekly pay multiplied by 2.15 in accordance with Department policy results in gross monthly income of \$430. BEM 505 (July 2014), pp. 7-8. Therefore, even though the Department had testified that Claimant's husband's income from [REDACTED] had not been included in the budget, it apparently was. However, the Department was unable to explain why this earned income was identified as "ineligible for earned income deduction." Department policy provides that gross countable earned income is reduced by a 20% earned income deduction. BEM 550, p. 1. Therefore, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it excluded this income from calculation of the earned income deduction.

The Department testified that the \$422 in unearned income in the budget was Claimant's SSI income. However, Claimant testified that, although she had been found eligible for SSI, the Social Security Administration (SSA) had been withholding her monthly payments since 2012 because it had determined that she had been overpaid. The Department provided an SOLQ report showing benefits paid by SSA to Claimant that showed, consistent with Claimant's testimony, that no payments of SSI that Claimant was eligible to receive since January 1, 2015, had been made and indicated that an overpayment was being recovered (Exhibit G).

Department policy provides that amounts deducted by an issuing agency to recover a previous overpayment or ineligible payment are not part of gross income unless (i) the original payment now being recovered was excluded income when received or (ii) the SSI recoupment was due to an intentional program violation (IPV). BEM 500 (April 2015), p. 5. Because there was no evidence that the amounts being withheld by SSA from Claimant's SSI were due to an IPV or were previously excluded when paid to

Claimant, the Department did not act in accordance with Department policy when it considered \$422 in unearned income in calculating Claimant's income and, consequently, her monthly FAP benefits.

Claimant testified during the hearing that SSA had notified her that it had improperly withheld SSI payments from her and she was anticipating a lump-sum payment for those improperly withheld payments. She is advised to notify the Department when she receives such a payment so that the Department can determine her ongoing FAP eligibility.

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 calculated Claimant's monthly FAP benefits for April 1, 2015, ongoing.

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 Claimant's FAP benefits for April 1, 2015 ongoing;
2. Issue supplements to Claimant for any FAP benefits she was eligible to receive but did not; and
3. Notify Claimant in writing of its decision.



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

Date Signed: **6/2/2015**

Date Mailed: **6/2/2015**

ACE / tlf

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: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]