

**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.: 15-006798
Issue No.: 2007; 3008; 5000
Case No.: ██████████
Hearing Date: June 10, 2015
County: Oakland-District 4

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, an in-person hearing was held on June 10, 2015, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Health and Human Services (Department) included ██████████, Family Independence Manager.

ISSUE

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

Did the Department properly process Claimant's Medicare Savings Program (MSP) case?

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 and MSP benefits.
2. Claimant is the sole member of her FAP group.
3. On March 4, 2014, the Social Security Administration (SSA) notified Claimant that the State would no longer pay her Medicare Part B premiums after January 2014 and she would have to start paying those premiums beginning February 2014.

4. Beginning January 2015, Claimant received gross monthly Retirement, Survivors and Disability Income (RSDI) benefits of \$1174.
5. On April 22, 2015, Claimant filed a request for hearing disputing the Department's actions concerning her MSP case and its calculation of her FAP benefits. Claimant also requested a hearing for State Emergency Relief assistance (SER) if her application was denied.

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).

Claimant requested a hearing on April 22, 2015, concerning her FAP and MSP cases and, in the event her subsequent SER application was denied, her SER denial. Claimant admitted that she filed her SER application on May 1, 2015. An opportunity for a hearing is available to an applicant whose claim for assistance is denied or is not acted upon with reasonable promptness. Mich Admin Code, R. 792.11002. Therefore, at the time she submitted her April 22, 2015, request for hearing, a right to hearing concerning the Department's decision on an SER application filed May 1, 2015, was not available. As such, Claimant's hearing request concerning SER is dismissed for lack of jurisdiction. The hearing proceeded to address Claimant's FAP and MSP issues.

FAP

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.

A client can request a hearing concerning current FAP benefits at any time within the benefit period. BAM 600 (April 1, 2015), p. 6. The Department provided a copy of Claimant's June 2015 FAP net income budget which was reviewed with Claimant at the hearing (Exhibit B).

The budget showed unearned gross monthly income of \$1174, which the Department established through a Single Online Query (SOLQ) report, the Department's data exchange with the SSA (Exhibit C), was Claimant's monthly RSDI as of January 2015. Claimant confirmed that this was her sole income

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. FAP groups with one or more SDV members and no earned income are eligible for the following deductions from the group's total income:

- Standard deduction.
- Dependent care expense.
- Excess shelter.
- Court ordered child support and arrearages paid to non-household members.
- Verified, out-of-pocket medical expenses for the SDV member(s) that exceed \$35.

BEM 554 (October 2014), p. 1; BEM 556 (July 2013), p. 3.

The Department subtracts the standard deduction and deductions for dependent care, child support, and medical expenses from a client's gross income to arrive at the client's adjusted gross income. BEM 556, pp. 3-4. Based on Claimant's one-person FAP group, Claimant was eligible for a \$154 standard deduction, as shown on the budget. RFT 255 (October 2014), p. 1. Claimant confirmed that she had no day care or child support expenses. Therefore, the budget properly showed \$0 for those deductions. The SOLQ report showed that the State paid Claimant's Part B Medicare premiums and Claimant confirmed that she had not provided the Department with proof of any out-of-pocket medical expenses. Therefore, Claimant was not eligible for a medical expense deduction. When Claimant's gross monthly income of \$1174 is reduced by the \$154 standard deduction, her adjusted gross income is \$1020.

The final deduction available from Claimant's income is the excess shelter deduction. The excess shelter deduction for a FAP group with a SDV member is (i) the sum of the client's shelter expenses and applicable utility standard **less** (ii) one-half of the client's adjusted gross income. BEM 556, pp. 4-5. The Department provided an excess shelter deduction (Exhibit D) showing that Claimant received the \$553 mandatory heat and utility (h/u) standard, which is the most advantageous utility standard available to a client. See RFT 255, p. 1; BEM 554, pp. 20-23. Shelter expenses include (i) 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; (ii) property taxes, state and local assessments, and insurance on the structure; and (iii) home repair expenses for a home substantially damaged or destroyed due to a natural disaster such as fire or flood. BEM 556, pp. 12-14. The excess shelter deduction showed that Claimant's monthly shelter expenses were \$558.71, which the Department testified was the sum of Claimant's \$486.34 mortgage and her monthly \$72.37 homeowner's insurance policy premium. Claimant did not offer any evidence to dispute this information. Based on these figures, Claimant's excess shelter deduction was \$602, which is the difference between the

\$1112 (the sum of Claimant's \$558.71 shelter expenses and the \$553 h/u standard) and \$510 (which is one half of Claimant's \$1020 adjusted gross income).

When Claimant's \$1020 adjusted gross income is reduced by the \$602 excess shelter deduction, her net income is \$418 as shown on the second page of the net income budget (Exhibit B). See BEM 556, pp. 3-5. Based on a single-person FAP group and a net income of \$418, Claimant was eligible for monthly FAP benefits of \$68 for June 2015 ongoing, as shown on the budget. RFT 260 (October 2014), p. 6. Therefore, the Department acted in accordance with Department policy in calculating Claimant's current FAP benefit level.

Claimant was also concerned about the fluctuations in her FAP benefits, arguing that, although she received \$84 in monthly FAP benefits for March 2014 to September 2014, with an increase to \$91 in October 2014, the benefits decreased to \$59 in November and December 2014, to \$50 in January, and to \$72 in February and March 2014 even though her income had remained the same (Exhibit 1). Generally, a client must request a hearing within 90 days of the date the Department sends the client notice of a change. BAM 600, p. 6. In this case, Claimant denied receiving any notices of case action concerning changes in her FAP benefits. At the hearing, the Department acknowledged that the last notice it had sent Claimant concerning her FAP benefits was in February 2014. Because there was no evidence that Claimant was notified of the decreases to her FAP benefits beginning in November 2014, the budgets for the months between November 2014 and May 2015 were reviewed.

A comparison of the June 2015 FAP net income budget to the February net income budget (Exhibits E and F), which shows the information the Department used to calculate Claimant's \$72 in monthly benefits for February to May 2015, reveals that the only difference between the two budgets is that Claimant's monthly shelter expenses were \$572 for the periods between February 2015 and May 2015. Applying the formula described above, based on \$572 in monthly shelter expenses, Claimant's excess shelter deduction for February 2015 to May 2015 was \$615, as shown on the February FAP excess shelter deduction (Exhibit F). Claimant's adjusted gross income of \$1020 reduced by a \$615 excess shelter deduction results in net income of \$405. Based on her single person FAP group and net income of \$405, Claimant was eligible for \$72 in monthly FAP benefits for February 2015 to May 2015. RFT 260, p. 6. Therefore, the Department acted in accordance with Department policy in calculating Claimant's benefits for those months.

Although a copy of the January 2015 FAP net income budget was not admitted into evidence, a review of the budget at the hearing showed that the only difference between that budget and the February 2015 budget was that monthly shelter expenses were \$499.88 for that month. Applying the formula described above, Claimant's excess shelter deduction for January 2015 was \$543 (the sum of the \$500 shelter expenses and \$553 h/u standard, less \$510, which is one half of Claimant's adjusted gross income). Claimant's adjusted gross income of \$1020 reduced by a \$543 excess shelter

deduction results in net income of \$477. Based on her single person FAP group and net income of \$477, Claimant was eligible for \$50 in FAP benefits for January 2015. RFT 260, p. 6. Therefore, the Department acted in accordance with Department policy in calculating Claimant's FAP benefits for January 2015.

A review of the November 2014 FAP net income budget (Exhibit G), which shows the calculation of \$59 in FAP benefits for November 2014 and December 2014, showed that the only change in Claimant's budget from the January 2015 budget is her income, which results in a change in the adjusted gross and net income. Although the budget shows gross unearned income of \$1155, the SOLQ shows Claimant received gross RSDI income of \$1154. A review of the budget calculations using \$1154 as Claimant's gross monthly income results in net income of \$447. A one-person FAP group with \$447 in net income is eligible for \$59 in FAP benefits, as shown on the budget. Therefore, the Department acted in accordance with Department policy when it concluded that Claimant was eligible for \$59 in monthly FAP benefits for November 2014 and December 2014.

MSP

MSP is part of the Medical Assistance (MA) program. The MA program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

Claimant alleges that the Department closed her MSP case in February 2014 and then reinstated it in September 2014 without notifying her of the case closure or the reason for the case closure. In support of her case, Claimant supplied a March 4, 2014 letter from SSA showing that, because the State would no longer pay her Medicare Part B premiums after January 2014, she would have to start paying those premiums beginning February 2014 and a copy of her Medicare Health Insurance card showing a Part B Medicare effective date of September 2014 (Exhibits 2 and 3).

In response, the Department presented an eligibility summary (Exhibit H) showing that Claimant had received ongoing, uninterrupted coverage for MSP under the Specified Low-Income Medicare Beneficiaries (SLMB) category. Under SLMB, the State pays for a client's Medicare Part B premiums. BEM 165 (January 2015), p. 2. In further reviewing its files, the Department testified that on January 18, 2014, Claimant's MSP case was scheduled to close on February 1, 2014, but that the case was reinstated on February 5, 2014. The Department acknowledged that no notice of case action was sent to Claimant but contended that it had not taken any negative action on Claimant's MSP case.

The SOLQ (Exhibit C) shows a Part B buy-in start date of September 1, 2014. The Part B buy-in program is the Department program that pays an eligible client's Part B premiums. BAM 810 (April 2014), pp. 7-8. The Part B buy-in effective date is the month SLMB coverage begins if the only basis for buy-in is MSP eligibility. BAM 810, p. 8. Therefore, the SOLQ supports Claimant's testimony that her MSP case was reinstated on September 1, 2014. Based on the evidence presented, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it processed Claimant's MSP case for February 2014 to August 2014.

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 calculated Claimant's monthly FAP benefits for November 2014 to June 2015 ongoing but did not act in accordance with Department policy when it processed Claimant's MSP case for February 2014 to August 2014.

DECISION AND ORDER

For the reasons described above, Claimant's request for hearing concerning SER is DISMISSED.

The Department's decisions are **AFFIRMED IN PART** with respect to its calculation of Claimant's FAP benefits for November 2014 to June 2015 ongoing and **REVERSED IN PART** with respect to its processing of Claimant's MSP case for February 2014 through August 2014.

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. Issue supplements to SSA for MSP payments Claimant was eligible to receive but did not from February 2014 through August 2014.



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

Date Signed: **6/18/2015**

Date Mailed: **6/18/2015**

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

