

**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.: 15-008872
Issue No.: 3008
Case No.: ██████████
Hearing Date: July 02, 2015
County: Wayne-District 15

ADMINISTRATIVE LAW JUDGE: Zainab Baydoun

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 July 2, 2015, from Detroit, Michigan. Participants on behalf of Claimant included Claimant and ██████████, Peer Support Specialist at the ██████████. Participants on behalf of the Department of Health and Human Services (Department) included ██████████, Eligibility Specialist and ██████████, Assistance Payment Supervisor.

ISSUE

Did the Department properly calculate the amount of Claimant'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. Claimant was an ongoing recipient of FAP benefits.
2. Claimant's FAP benefits were reduced to \$24 monthly, effective February 1, 2015. (Exhibit A)
3. On May 28, 2015, Claimant requested a hearing disputing the Department's calculation of his FAP benefits.

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.

As a preliminary matter, although the Department raised a concern regarding the timeliness of Claimant's hearing request, it was established that Claimant was disputing the Department's calculation and amount of his FAP benefits which can be requested at any time and does not require a 90 day appeal requirement. Thus, the hearing proceeded with respect to the calculation of Claimant's FAP benefits.

In this case, Claimant requested a hearing disputing the decrease in his FAP benefits. The evidence established that Claimant's FAP benefits were reduced to \$24 effective February 1, 2015. (Exhibit A). At the hearing, the Department presented the FAP EDG Net Income Results Budget which was reviewed to determine if the Department properly calculated the amount of Claimant's FAP benefits. (Exhibit B).

All countable earned and unearned income available to the client must be considered in determining the Claimant's eligibility for program benefits. BEM 500 (April 2015), pp. 1 – 5. The Department considers the gross amount of money earned from Supplemental Security Income (SSI) in the calculation of unearned income for purposes of FAP budgeting. BEM 503 (July 2014), pp. 31-32. State SSI Payments (SSP) are issued quarterly in the amount of \$42 and the payments are issued in the final month of each quarter; see BEM 660. The Department will count the monthly SSP benefit amount (\$14) as unearned income. BEM 503, p.33; see RFT 248 (January 2015), p. 1.

The Department concluded that Claimant had unearned income of \$747 which it testified came from \$733 in SSI benefits and \$14 in SSP benefits for Claimant. Although the Department did not present a SOLQ in support of its testimony, Claimant confirmed that he receives \$733 in SSI and \$14 SSP benefits. Therefore, the Department properly calculated Claimant's gross income.

The deductions to income on the net income budget were also reviewed. Claimant is the only member of his FAP group and is a senior/disabled/veteran (SDV) member of

the group. BEM 550 (February 2014), pp. 1-2. Groups with one or more SDV members are eligible for the following deductions to income:

- Dependent care expense.
- Excess shelter.
- Court ordered child support and arrearages paid to non-household members.
- Medical expenses for the SDV member(s) that exceed \$35.
- Standard deduction based on group size.
- An earned income deduction equal to 20% of any earned income.

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

In this case, Claimant did not have any earned income and there was no evidence presented that he had any dependent care, child support, or medical expenses over \$35. Therefore, the budget properly did not include any deduction for earned income, dependent care expenses, child support, or medical expenses. Based on his confirmed one-person group size, the Department properly applied the \$154 standard deduction. RFT 255 (October 2014), p. 1.

In calculating Claimant's excess shelter deduction of \$28, the Department testified that it considered Claimant's confirmed \$200 monthly rental/housing expenses and the budget summary from the notice of case action shows that the Department applied a \$124 non-heat electric standard. (Exhibit A, p. 2).

Department policy provides that the \$553 mandatory heat and utility (h/u) standard is available only for FAP groups (i) that are responsible for heating expenses separate from rent or mortgage; (ii) that are responsible for cooling (including room air conditioners); (iii) whose heat is included in rent or fees **if** the client is billed for excess heat, has received the home heating credit in an amount greater than \$20 in the current month or the immediately preceding 12 months, or has received a Low-Income Home Energy Assistance Act (LIHEAP) payment or a LIHEAP payment was made on his behalf; (iv) whose electricity is included in rent or fees **if** the landlord bills the client separately for cooling; or (v) who have any responsibility for heating/cooling expense. BEM 554, pp. 16-19; RFT 255, p. 1. 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 that the FAP group has responsibility to pay. BEM 554, p. 19.

At the hearing, the Department explained that Claimant was no longer eligible for the \$553 heat and utility (h/u) standard in calculating the excess shelter deduction. The Department stated that Claimant was not responsible for any other heating/cooling, water, cooking fuel, trash removal, or telephone expenses separate from his monthly rent. Claimant disputed the Department's testimony and testified that he is responsible for heating expenses. Claimant testified that his heat is electric; however, it was unclear whether the expense was included in the costs of his monthly rent. Claimant stated that

he received a home heating credit and that he applied for SER through the Department. Claimant also testified that he has telephone expenses but was informed that because he did not have a home phone, the Department would not consider the expense. There was no evidence presented that the Department requested that Claimant verify his expenses and the Department did not present any supporting documentation to establish that it properly determined that Claimant was only eligible for the \$124 non-heat electric standard in calculating his excess shelter deduction.

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 because of the errors in the calculation of Claimant's excess shelter deduction, the Department did not act in accordance with Department policy when it determined that Claimant was eligible for FAP benefits in the amount of \$24 effective February 1, 2015.

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 budget for February 1, 2015; and
2. Issue FAP supplements to Claimant from February 1, 2015, ongoing.



Zainab Baydoun
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **7/9/2015**

Date Mailed: **7/9/2015**

ZB / 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]