

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-008890
Issue No.: 3008
Case No.: [REDACTED]
Hearing Date: August 05, 2015
County: WAYNE-DISTRICT 35

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 three way telephone hearing was held on August 5, 2015, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant and the Claimant's Authorized Hearing Representative, (AHR) [REDACTED]. Participants on behalf of the Department of Health and Human Services (Department) included [REDACTED], Hearing Facilitator.

ISSUE

Did the Department properly reduce the Claimant's Food Assistance (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. The Department issued a Notice of Case Action on [REDACTED], reducing her FAP benefits effective [REDACTED].
2. The Claimant pays rent of \$236 and is responsible for no utilities. The Department used \$323 for rent. Exhibit 1
3. The Claimant receives Social Security and is 80 years of age, and thus is a Senior/Disabled FAP group.
4. The Claimant receives a pension monthly for \$85.78
5. The Claimant requested a timely hearing on [REDACTED] regarding the reduction of her food assistance.

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.

In this case, the Department did not produce FAP budgets or how it determined the Claimant's excess shelter allowance. The Department did not present any evidence from the case file that the rent it used in the amount of \$323 was correct, and the Claimant testified that it was \$236 monthly. In addition the Department had no information regarding how the unearned income was determined, and thus could not be determined based upon the evidence presented how it found the Claimant's unearned income to be \$807. The Claimant's Authorized Hearing Representative testified that the income was from Social Security of \$730 and a pension of \$85.78. It could not be determined based upon the Department's evidence whether the unearned income it used to determine FAP benefits was correct. No SOLQ to show Social Security received or verification of the pension was presented. Overall the Department failed to meet its burden of proof to demonstrate that it properly reduced the Claimant's FAP benefits. Unfortunately, due to a change in Department policy, a large heat and utility (h/u) expense of \$553 is no longer available to reduce the Claimant's income unless a client actually pays for heat/ electricity. Prior to the policy change the \$553 allowance was automatically given to everyone whether they paid these expenses or not.

Effective [REDACTED], The Department was required when processing applications, redeterminations or when a change was reported clients were not automatically any longer allowed the automatic heat and utility standard in the amount of \$553. These changes in Department policy applied to all food assistance recipients equally. Thereafter, the Department began to gradually implement this change, which in this case resulted in the Claimant seeing a decrease in her FAP. Changes in the Department's policy caused, in some cases, a reduction in food assistance benefits after the removal of the automatic heat and utility standards previously applied to their food assistance budgets, as is the case in this hearing.

Changes to BEM 554, effective October 1, 2014, removed the automatic mandatory heat and utility standard. For all FAP groups that received the h/u standard on or before February 7, 2014, the h/u standard will remain in place for a period of five months after the month of their first redetermination, or first reported case change occurring on or after May 1, 2014. In order to continue receiving the h/u standard beyond the expiration of the five-month period, the FAP group must meet the requirements of the MANDATORY HEAT AND UTILITY STANDARD section. BEM 554 p. 15

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 the Claimant's FAP benefits.

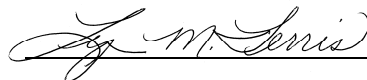
DECISION AND ORDER

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. The Department shall recalculate the Claimant's FAP benefits and shall send Claimant's Authorized Representative a verification request to verify rent and pension unearned income.
2. The Department shall provide notice to the Claimant and her Authorized Representative of its determination of her Food Assistance benefit amount and issue a supplement for FAP benefits if the Claimant is otherwise entitled to receive a supplement in accordance with Department policy.



Lynn M. Ferris
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **8/5/2015**

Date Mailed: **8/5/2015**

LMF / hw

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:

