

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

IN THE MATTER OF:

[REDACTED]

MAHS Reg. No.: 15-009459
Issue No.: 3008
Agency Case No.: [REDACTED]
Hearing Date: July 23, 2015
County: Oakland (4) North Saginaw

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 July 23, 2015, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED], the Claimant, and [REDACTED], [REDACTED], Authorized Hearing Representative. Participants on behalf of the Department of Health and Human Services (Department) included [REDACTED], Assistance Payments Supervisor, and [REDACTED], Assistance Payments Worker.

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 FAP recipient.
2. Claimant's FAP case was due for Redetermination in April 2015.
3. On May 29, 2015, a Notice of Case Action was issued stating FAP was approved with a monthly allotment of \$ [REDACTED] effective May 1, 2015.
4. On June 8, 2015, Claimant filed a hearing request contesting the Department's determination.

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. For Retirement, Survivors, and Disability Insurance, (RSDI), a benefit administered by the Social Security Administration, the gross benefit amount is counted as unearned income. BEM 503 (July 1, 2014), p. 28. Child support is also counted as unearned income. BEM 503, p. 6.

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. 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. The Department uses 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.

BEM 505 addresses prospective budgeting and income change processing. When budgeting child support, the Department is to use the average of child support payments received in the past three calendar months, unless changes are expected. The Department is to include the current month if all payments expected for the month have been received. The Department is not to include amounts that are unusual and not expected to continue. BEM 505, (July 1, 2014), p. 3.

Neither of the Department witnesses was the worker assigned to this case at the time the case action was taken, May 29, 2015. The Department witnesses testified that

because the Redetermination was due in April 2015, it appears the worker utilized the average of the verified child support payments for January, February, and March 2015.

However, the Department did not complete the FAP eligibility determination in April 2015. Rather, the Notice of Case Action was issued May 29, 2015, for the determination that was effective May 1, 2015. Therefore, the Department was not just looking at a prospective budget for future months at the time the action was taken. Further, the Bridges Child Support Search print out verifies Claimant's testimony that the child support payments stopped in April 2015. Specifically, the Bridges Child Support Search print out documents that the last child support payment was [REDACTED], [REDACTED] and there were no child support payments in [REDACTED]. Thus, the child support payments had stopped more than one month before the May 29, 2015, Notice of Case Action was issued. Accordingly, the Department erred by including the child support income in Claimant's FAP budget for May 2015 and ongoing months.

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 determined the amount of Claimant's FAP monthly allotment.

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. Re-determine Claimant's eligibility for FAP retroactive to the May 1, 2015, effective date in accordance with Department policy.
2. Issue written notice of the determination in accordance with Department policy.
3. Supplement for lost benefits (if any) that Claimant was entitled to receive, if otherwise eligible and qualified in accordance with Department policy.



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

Date Mailed: **7/29/2015**

CL/jaf

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:

