

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-010182
Issue No.: 2000; 3008
Case No.: [REDACTED]
Hearing Date: July 20, 2015
County: WAYNE-DISTRICT 76

ADMINISTRATIVE LAW JUDGE: Eric Feldman

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 20, 2015, from Detroit, Michigan. Participants on behalf of Claimant included Claimant, Sallie Hunter; and Claimant's father/witness, [REDACTED]. Participants on behalf of the Department of Health and Human Services (Department or DHHS) included [REDACTED] Hearings Facilitator; and [REDACTED], Family Independence Specialist.

ISSUE

Did the Department properly reduce Claimant's Food Assistance Program (FAP) to the amount of \$114 effective June 1, 2015?

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 recipient of FAP benefits. See Exhibit A, p. 22.
2. On [REDACTED], the Department sent Claimant a Notice of Case Action notifying her that her FAP benefits decreased to \$114 effective June 1, 2015 to October 31, 2015. See Exhibit A, pp. 9-11.
3. For June 2015, Claimant received \$10 in Cash assistance.
4. On [REDACTED], Claimant filed a hearing request, protesting her FAP allotment. See Exhibit A, pp. 2 and 6.

5. Effective [REDACTED], Claimant's FIP benefits closed. See Exhibit A, pp. 14-15 (Notice of Case Action dated June 4, 2015).
6. Effective [REDACTED], Claimant's FAP benefits increased to \$163. See Exhibit A, p. 22.

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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101-.3131.

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.

The Medical Assistance (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.

Preliminary matter

On [REDACTED], Claimant filed a hearing request, disputing her FIP, FAP, and her daughter's MA benefits. See Exhibit A, p. 7. During the hearing, Claimant indicated that she wanted to dispute the MA benefits. However, on [REDACTED], Claimant withdrew her [REDACTED] hearing request when she signed the Hearing Request Withdrawal In-Person Meaningful Prehearing Conference form (DHS-18M). See Exhibit A, p. 8. Moreover, the undersigned reviewed Claimant's current hearing request dated [REDACTED] and found no dispute with the MA benefits. See Exhibit A, p. 2. Based on the foregoing information and evidence, the undersigned lacks the jurisdiction to

address Claimant's and/or her daughter's MA benefits as she withdrew her previous hearing request. See BAM 600 (April 2015), pp. 1-6 and 27-28 (Withdrawals requested in-person at the meaningful prehearing conference).

FAP benefits

It was not disputed that the certified group size is two and that there are no senior/disabled/disabled veteran (SDV) group members. The Department presented the June 2015 FAP budget for review. See Exhibit A, pp. 18-19.

First, the Department calculated Claimant's gross unearned income to be \$403, which consisted of Claimant's cash assistance benefits. See Exhibit A, p. 18. FIP benefits are considered the unearned income of the FIP head of household (HOH, formerly grantee). BEM 503 (July 2014), p. 14. The Department counts as unearned income, the amount of cash assistance benefits minus any excludable portion. BEM 503, p. 14. However, the Department acknowledged that it erred in the calculation of Claimant's unearned income as she only received \$10 in FIP assistance for June 2015 (Extended FIP (EFIP) she received for June 2015). See BEM 519 (July 2013), p. 1. As such, the Department improperly calculated Claimant's unearned income in accordance with Department policy and the Department is ordered to recalculate Claimant's FAP benefits effective [REDACTED]. See BEM 503, p. 14.

Second, the Department calculated Claimant's gross earned income to be \$700 for June 2015. See Exhibit A, p. 18. The Department testified that it obtained Claimant's employment and wages from the Partnership. Accountability Training. Hope. (PATH) program.

In response, Claimant indicated that her gross earned income for June 2015 was approximately \$400. Claimant also testified that she worked at two different employers (Claimant was not employed at both at the same time). Claimant/witness indicated that her employment earnings for both employers were the same and consisted as to following: (i) paid \$8.15 hourly; (ii) worked approximately 20 hours a week; and (iii) paid bi-weekly.

A group's financial eligibility and monthly benefit amount are determined using: actual income (income that was already received) or prospected income amounts (not received but expected). BEM 505 (July 2014), p. 1. Only countable income is included in the determination. BEM 505, p. 1. Each source of income is converted to a standard monthly amount, unless a full month's income will not be received. BEM 505, p. 1. The Department converts stable and fluctuating income that is received more often than monthly to a standard monthly amount. BEM 505, p. 6. The Department uses one of the following methods: (i) multiply weekly income by 4.3; (ii) multiply amounts received every two weeks by 2.15; or (iii) add amounts received twice a month. BEM 505, pp. 7-8.

Based on the above information, it appears that the Department calculated Claimant's income using prospected income budgeting. Multiplying Claimant's bi-weekly income of \$326 (\$8.15 hourly rate multiplied by 20 hours a week, then multiplied by 2 for bi-weekly conversion) by 2.15, results in a standard monthly amount of \$700. Nevertheless, the Department miscalculated Claimant's unearned income as stated above. Thus, the Department will recalculate Claimant's FAP budget, including her earned income.

Third, the Department properly applied the \$154 standard deduction applicable to Claimant's group size of two. See RFT 255 (October 2014), p. 1 and see Exhibit A, p. 18.

Fourth, Claimant's Notice of Case Action dated [REDACTED], indicated that her monthly housing costs were \$400, which Claimant did not dispute. See Exhibit A, p. 11.

Fifth, the Notice of Case Action dated [REDACTED], indicated that Claimant did not receive any form of shelter deductions (i.e., the mandatory heat and utility (h/u) standard in the amount of \$553). See Exhibit A, p. 11. Claimant testified that her heat and electric are included in her rent. Claimant testified, though, that she does have telephone expenses and has provided her telephone number to the Department in the past. See BEM 554 (October 2014), pp. 14-20.

For groups with one or more SDV members, the Department uses excess shelter. See BEM 554, p. 1. In calculating a client's excess shelter deduction, the Department considers the client's monthly shelter expenses and the applicable utility standard for any utilities the client is responsible to pay. BEM 556 (July 2013), pp. 4-5. The utility standard that applies to a client's case is dependent on the client's circumstances. The mandatory h/u standard, which is currently \$553 and the most advantageous utility standard available to a client, is available only for FAP groups (i) that are responsible for heating expenses separate from rent, mortgage or condominium/maintenance payments; (ii) that are responsible for cooling (including room air conditioners) and verify that they have the responsibility for non-heat electric; (iii) whose heat is included in rent or fees if the client is billed for excess heat by the landlord; (iv) who have received the home heating credit (HHC) in an amount greater than \$20 in the current month or the immediately preceding 12 months; (v) who have received a Low-Income Home Energy Assistance Act (LIHEAP) payment or a LIHEAP payment was made on his behalf in an amount greater than \$20 in the current month or in the immediately preceding 12 months prior to the application/recertification month; (vi) whose electricity is included in rent or fees if the landlord bills the client separately for cooling; or (vii) who have any responsibility for heating/cooling expense (based on shared meters or expenses). BEM 554, pp. 16-20; RFT 255, p. 1.

To show responsibility for heating and/or cooling expenses, acceptable verification sources include, but are not limited to, current bills or a written statement from the provider for heating/cooling expenses or excess heat expenses; collateral contact with the landlord or the heating/cooling provider; cancelled checks, receipts or money order copies, if current as long as the receipts identify the expense, the amount of the

expense, the expense address, the provider of the service and the name of the person paying the expense; DHS-3688 shelter verification; collateral contact with the provider or landlord, as applicable; or a current lease. BEM 554, pp. 16-20. For groups that have verified that they own or are purchasing the home that they occupy, the heat obligation needs to be verified only if questionable. BEM 554, p. 16.

FAP groups not eligible for the mandatory 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. These include the non-heat electric standard (\$124 as of October 1, 2014) if the client has no heating/cooling expense but has a responsibility to pay for non-heat electricity; the water and/or sewer standard (currently \$77) if the client has no heating/cooling expense but has a responsibility to pay for water and/or sewer separate from rent/mortgage; the telephone standard (currently \$34) if the client has no heating/cooling expense but has a responsibility to pay for traditional land-line service, cell phone service, or voice-over-Internet protocol; the cooking fuel standard (currently \$47) if the client has no heating/cooling expense but has a responsibility to pay for cooking fuel separate from rent/mortgage; and the trash removal standard (currently \$21) if the client has no heating/cooling expense but has a responsibility to pay for trash removal separate from rent/mortgage. BEM 554, pp. 20-24; RFT 255, p. 1.

Sometimes the excess shelter deduction calculation will show more than one utility deduction. However, if the client is eligible for the \$553 mandatory h/u, that is all the client is eligible for. If she is not eligible for the mandatory h/u, she gets the sum of the other utility standards that apply to her case. BEM 554, pp. 15 and 20.

During the hearing, Claimant's testimony established that she is only responsible for telephone expenses. For the telephone standard deduction, the Department does not verify the telephone expense, unless questionable. BEM 554, p. 22. Therefore, the Department will provide Claimant with the \$34 telephone standard. See RFT 255, p. 1.

DECISION AND ORDER

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 (i) the Department did not act in accordance with Department policy when it improperly calculated Claimant's FAP benefits effective June 1, 2015; and (ii) the undersigned lacks the jurisdiction to address Claimant's dispute with her and/or her daughter's MA benefits.

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to the lack of jurisdiction for the MA benefits and **REVERSED IN PART** with respect to the FAP decision.

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. Begin recalculating the FAP budget for [REDACTED], ongoing, in accordance with Department policy;
2. Issue supplements to Claimant for any FAP benefits she was eligible to receive but did not from [REDACTED], ongoing; and
3. Notify Claimant of its FAP decision.



Eric Feldman
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **7/27/2015**

Date Mailed: **7/27/2015**

EF / 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:

