

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-013294
Issue No.: 3001
Case No.: [REDACTED]
Hearing Date: September 02, 2015
County: Monroe

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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 September 2, 2015, from Lansing, Michigan. Participants on behalf of Claimant included the Claimant and his attorney, [REDACTED], [REDACTED], from [REDACTED]. Participants on behalf of the Department of Health and Human Services (Department) included [REDACTED], Assisted Payments Manager.

ISSUE

Due to excess income, did the Department properly reduce Claimant's benefits for Food Assistance Program (FAP)?

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 Claimant received FAP benefits.
2. On June 25, 2015, the Department reduced Claimant's FAP benefits due to excess income from \$ [REDACTED] to \$ [REDACTED] due to the loss of the home heating credit.
3. On June 25, 2015, the Department sent Claimant a notice that he would have a decrease in FAP benefits from \$ [REDACTED] to \$ [REDACTED] due to the loss of the home heating credit.
4. On July 21, 2015, the Claimant filed a hearing request, contesting the Department's actions.

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 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, pp. 4-5. The utility standard that applies to a client's case is dependent on the client's circumstances. The mandatory heat and utility (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 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 o expenses). BEM 554 (October 2014), pp. 16-20; RFT 255 (October 2014), 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 form 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.

Additionally, the Claimant had been a recipient of FAP benefits. The Claimant was subject to the new policy requiring a redetermination of FAP eligibility and the loss of the home heating credit unless the Claimant actually paid for heating. The Claimant does not pay for heating because it is included in his rent. The Claimant was approved for Social Security benefits of RSDI of \$ [REDACTED] for a gross income of \$ [REDACTED] Department Exhibit 1a-8.

As a result of excess income, the Claimant had a decrease in FAP benefits. After deductions from his gross income of \$ [REDACTED] of a \$ [REDACTED] standard deduction and a \$ [REDACTED] medical deduction for an adjusted gross income of \$ [REDACTED]. The Claimant was given a total shelter deduction of \$364, resulting from a housing expense of \$ [REDACTED] and telephone standard of \$ [REDACTED]. The Claimant was given an adjusted excess shelter deduction of \$0, with a total shelter deduction of \$ [REDACTED] minus 50% of adjusted gross income of \$ [REDACTED]. The Claimant had a net income of \$ [REDACTED] which was the adjusted gross income of \$ [REDACTED] minus the excess shelter deduction of \$0. With a net income of \$ [REDACTED] the Claimant qualified with a household group size of 1 for a maximum benefit of \$ [REDACTED] plus \$0 in economic recovery minus 30% of net income of \$ [REDACTED] resulting in a net benefit amount of \$ [REDACTED] Department Exhibit 1a-8.

BEM 554 FAP ALLOWABLE EXPENSES AND EXPENSE BUDGETING

Home Heating Credit (HHC), page 18

Existing FAP Groups

FAP groups who are at redetermination or have their first case change and have received a HHC in an amount greater than \$20 in the certification month or in the immediately preceding 12 months prior to the certification month are eligible for the h/u standard.

Verification

Verify receipt of HHC at application, redetermination or when a change is reported.

Verification Sources

Acceptable verification sources include, but are not limited to:

- Bridges inquiry. (HHC Approved Client Inquiry).
- Letter from provider.
- Collateral contact with provider.
- Copy of HHC warrant.

During the hearing, the Department stated that the Claimant had not applied for the Home Heating Credit (HHC). As a result, he was not eligible for the deduction. The Claimant's Attorney cited Department bulletins about the HHC, which stated that an application was enough with verbal or written verification. However, Department policy trumps bulletins. The Department Policy in BEM 554 is very clear that the Claimant had to have received the HHC currently or within the past year. The Claimant has applied for the HHC and should be eligible for heat and utility deduction once he received the HHC and it is greater than \$20.

Another argument made by the Claimant's Attorney is that the Department should have provided more assistance than they did because of the Claimant's limitation. The Department met with the Claimant twice for over a half an hour to explain the decrease in benefits. If the Claimant felt that he needed additional assistance, he could have had someone of a family or friend as an authorized representative.

The Department has met its burden that the Claimant had excess income for FAP resulting in a decrease in FAP benefits to \$■■■■ BEM 500, 550, and 554.

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 determined that the Claimant was no longer eligible for the home heating credit resulting in a decrease of FAP benefits.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.

Carmen G. Fahie

Carmen G. Fahie
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

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

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

CGF/las

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:

