

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

IN THE MATTER OF:

██████████
██████████
██████████

MAHS Reg. No.: 15-015089
Issue No.: 3001
Agency Case No.: ██████████
Hearing Date: October 14, 2015
County: Macomb (20)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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. After due notice, a telephone hearing was held on October 14, 2015, from Detroit, Michigan. Nuha Istefan, Claimant's niece, testified and appeared as Claimant's authorized hearing representative (AHR); she also translated for her cousin. ██████████, Claimant's daughter, testified on behalf of Claimant. Participants on behalf of the Michigan Department of Health and Human Services (MDHHS) included ██████████-██████████, hearing facilitator.

ISSUE

The issue is whether Claimant timely requested a hearing to dispute Food Assistance Program (FAP) eligibility since June 2015.

The second issue is whether MDHHS properly determined Claimant's current FAP eligibility.

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 the only member of her FAP benefit group.
2. On May 7, 2015, MDHHS received a Shelter Verification stating Claimant paid ██████████ in rent and that electricity and heat were included in rent.
3. On May 7, 2015, MDHHS received a note stating Claimant paid ██████████ in rent and ██████████ for electricity and heat.

4. On May 8, 2015, MDHHS determined Claimant was eligible for █████ in FAP, in part, based on a █████ rent obligation and no utility obligations.
5. On August 25, 2015, Claimant requested a hearing to dispute her FAP eligibility from June 2015.
6. During the hearing, Claimant's daughter (who is also Claimant's landlord) testified Claimant paid █████ in rent and half of heat and electric expenses.

CONCLUSIONS OF LAW

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. MDHHS (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. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Claimant's niece requested a hearing to dispute Claimant's FAP eligibility. Claimant's niece testified that FAP benefits since May 2015 were disputed. MDHHS alleged that Claimant's hearing request was not timely.

The client or authorized hearing representative has 90 calendar days from the date of the written notice of case action to request a hearing. BAM 600 (4/2015), p. 6. The request must be received in the local office within the 90 days. *Id.*

It was not disputed that MDHHS mailed Claimant written notice of Claimant's June 2015 FAP eligibility on May 8, 2015. It was not disputed that Claimant submitted a hearing request to MDHHS on August 25, 2015- more than 90 days after the written notice in dispute. Thus, Claimant is untimely to dispute her FAP eligibility from June 2015.

One notable exception exists to the 90-day rule applies for FAP benefits. The client or AHR may request a hearing disputing the current level of benefits at any time within the benefit period. *Id.*, p. 6. "Current level" is not specifically defined by MDHHS but is presumed to mean the amount of benefits as of the date of the hearing request.

Though Claimant cannot dispute FAP eligibility from June 2015, she can dispute FAP eligibility beginning August 2015 (the month of her hearing request). Accordingly, the analysis will proceed to determine if MDHHS properly determined Claimant's FAP eligibility since August 2015.

Claimant's niece testified that her 90-year-old aunt requires special food and that [REDACTED]/month is an insufficient amount of FAP eligibility. Neither argument affects how MDHHS determined FAP eligibility. BEM 556 explains how FAP eligibility is calculated.

BEM 556 directs MDHHS to determine countable income and expenses. MDHHS provided a budget summary (Exhibit 2) listing all factored income and expenses; MDHHS also provided a FAP budget (Exhibits 10-12) verifying the same. During the hearing, Claimant's niece was asked if she agreed, disagreed, or did not know if the MDHHS-factored budgeted income and expenses were proper.

It was not disputed that Claimant received [REDACTED] in unearned income. It was not disputed that Claimant had no other income.

MDHHS uses certain expenses to determine net income for FAP eligibility and benefit levels. BEM 554 (October 2014), p. 1. For groups without a senior (over 60 years old), disabled or disabled veteran (SDV) member, MDHHS considers the following expenses: child care, excess shelter (housing and utilities) up to a capped amount and court-ordered child support and arrearages paid to non-household members. For groups containing SDV members, MDHHS also considers the medical expenses for the SDV group member(s) and an uncapped excess shelter expense. It was not disputed that Claimant was aged, and therefore, her FAP group is an SDV group.

Verified medical expenses for SDV groups, child support and day care expenses are subtracted from a client's monthly countable income. Claimant's niece's testimony conceded that her aunt paid no day care, medical, or dependent care expenses.

Claimant's FAP benefit group receives a standard deduction of [REDACTED] RFT 255 (October 2014), p. 1. The standard deduction is given to all FAP benefit groups, though the amount varies based on the benefit group size. The standard deduction is subtracted from the countable monthly income to calculate the group's adjusted gross income. The adjusted gross income amount is found to be [REDACTED]

MDHHS factored that Claimant paid [REDACTED] in rent and was not responsible for paying utilities. Claimant's daughter testified that her mother lived with her. Claimant's daughter testified that her mother paid [REDACTED] in rent. Claimant's daughter also testified that her mother was responsible for a portion of utilities.

MDHHS received conflicting verifications from Claimant's daughter. A Shelter Verification dated May 5, 2015 (Exhibits 8-9) stated that Claimant paid [REDACTED] in rent and electric and heat were included in the rent. A note dated May 7, 2015 (Exhibit 7) from Claimant's daughter/landlord stated that Claimant paid [REDACTED] for rent and [REDACTED] for heat and electricity. Both documents appeared to be faxed to MDHHS on May 7, 2015.

During the hearing, MDHHS refused to concede that an inconsistency existed between Claimant's landlord's documents. MDHHS' refusal to concede the obvious is not

necessary to find an inconsistency between submitted rent/utilities verifications. It is found that Claimant's rent/utility verifications were inconsistent.

Verification means documentation or other evidence to establish the accuracy of the client's verbal or written statements. BAM 130 (7/2015), p. 1. Obtain verification when (see *Id.*):

- Required by policy. Bridges Eligibility Manual (BEM) items and MAGI policy specify which factors and under what circumstances verification is required.
- Required as a local office option. The requirement must be applied the same for every client. Local requirements may not be imposed for Medicaid Assistance (MA).
- Information regarding an eligibility factor is unclear, inconsistent, incomplete or contradictory. The questionable information might be from the client or a third party

When MDHHS received the conflicting documents, it would have been appropriate to contact Claimant's landlord to determine if Claimant paid █████ in rent and some utilities or Claimant paid █████ in rent. Some sort of clarification from Claimant's daughter/landlord would be appropriate. As it happened, Claimant's daughter testified giving the perfect opportunity for her to clarify which submitted document was accurate.

Claimant's daughter testified that her mother paid █████ in monthly rent and half of the electric and heat bill. Claimant's daughter's statement presented a third different statement of her mother's rent and utility obligations. Claimant's daughter's testimony will be deemed as a reported change in her mother's circumstances, but not sufficient testimony to clarify the previous inconsistent statement of her mother's rent and utility obligation. The unclarified inconsistency renders Claimant's utility obligation to be unverified. Accordingly, it is found that MDHHS properly budget no utility obligation for Claimant.

MDHHS only credits FAP benefit groups with what is called an "excess shelter" expense. This expense is calculated by subtracting half of Claimant's adjusted gross income from Claimant's total shelter obligation. Claimant's excess shelter amount is found to be █████ (rounding up to nearest dollar).

The FAP benefit group's net income is determined by taking the group's adjusted gross income and subtracting the allowable excess shelter expense. Claimant's FAP benefit group's net income is found to be █████. A chart listed in RFT 260 is used to determine the proper FAP benefit issuance. Based on Claimant's group size and net income, Claimant's proper FAP benefit issuance is found to be █████, the same amount calculated by MDHHS (see Exhibits 1 and 10).

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that Claimant failed to timely request a hearing to dispute FAP eligibility from June 2015 and July 2015. Claimant's hearing request is **PARTIALLY DISMISSED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly determined Claimant's FAP eligibility, effective August 2015, as [REDACTED]. The actions taken by MDHHS are **AFFIRMED**.



Christian Gardocki

Administrative Law Judge
for Nick Lyon, Director

Department of Health and Human Services

Date Signed: **10/16/2015**

Date Mailed: **10/16/2015**

CG/tm

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]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]