

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

IN THE MATTER OF:

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MAHS Reg. No.: 15-015749
Issue No.: 3008
Agency Case No.: ██████████
Hearing Date: October 19, 2015
County: Macomb-District 20

ADMINISTRATIVE LAW JUDGE: Zainab Baydoun

HEARING DECISION

Following Petitioner'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 October 19, 2015, from Detroit, Michigan. Petitioner appeared and represented herself. The Department was represented by ██████████, Hearings Facilitator.

ISSUE

Did the Department properly calculate the amount of Petitioner's Food Assistance Program (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. Petitioner was an ongoing recipient of FAP benefits.
2. In connection with a Semi-Annual review, Petitioner's eligibility for FAP benefits was reviewed. (Exhibit A, pp. 1-2)
3. On August 6, 2015, the Department sent Petitioner a Notice of Case Action informing her that effective September 1, 2015, she was approved for FAP benefits of \$16 monthly. (Exhibit A, pp. 16-19)
4. On August 27, 2015, Petitioner requested a hearing disputing the Department's calculation of her FAP benefits.

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, Petitioner requested a hearing disputing the decrease in her FAP benefits from \$125 monthly to \$16 monthly, effective September 1, 2015. At the hearing, the Department presented the FAP EDG Net Income Results Budget which was reviewed to determine if the Department properly calculated the amount of Petitioner's FAP benefits. (Exhibit A, pp.13-15).

All countable earned and unearned income available to the client must be considered in determining the Petitioner's eligibility for program benefits. BEM 500 (July 2015), pp. 1 – 5. The Department determines a client's eligibility for program benefits based on the client's actual income and/or prospective income. Prospective income is income not yet received but expected. BEM 505 (July 2015), pp. 1-2. In prospecting income, the Department is required to use income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month, discarding any pay if it is unusual and does not reflect the normal, expected pay amounts. BEM 505, p. 5. The Department will use income from the past 60 or 90 days for fluctuating or irregular income if: the past 30 days is not a good indicator of future income and the fluctuations of income during the past 60 or 90 days appear to accurately reflect the income that is expected to be received in the benefit month. BEM 505, pp.5-6. A standard monthly amount must be determined for each income source used in the budget. BEM 505, p. 7. Income received weekly is converted to a standard amount by multiplying the average of the weekly pay amounts by the 4.3 multiplier. BEM 505, pp. 7-8.

The Department concluded that Petitioner had earned income in the amount of \$1288, which it testified consisted of Petitioner's income from employment. The Department testified that it relied on the weekly paystubs that Petitioner provided with her Semi-Annual and specifically considered: \$263.84 paid on July 3, 2015; \$314.12 paid on July 10, 2015; \$321.30 paid on July 17, 2015; \$299.48 paid on July 24, 2015; and \$251.63 paid on July 31, 2015. (Exhibit A, pp. 3-7). Although Petitioner confirmed that the amounts relied on by the Department were accurate, after further review of the evidence and in consideration of the prospective budgeting policy referenced above, the

Department did not properly calculate Petitioner's income, as the total amount of Petitioner's income does equal \$1288.

The deductions to income on the budget were also reviewed. Petitioner is eligible for the following deductions to income:

- Dependent care expense.
- Excess shelter.
- Court ordered child support and arrearages paid to non-household members.
- Standard deduction based on group size.
- An earned income deduction equal to 20% of any earned income.

BEM 554 (October 2014), p. 1; BEM 556 (July 2013), p. 3.

The Department concluded that Petitioner was eligible for an earned income deduction of \$258, however, because as discussed above, the Department did not properly calculate Petitioner's earned income, the 20% earned income deduction is also incorrect. Based on the confirmed one person group size, the Department properly applied the \$154 standard deduction. RFT 255 (October 2014), p. 1. Petitioner did not have any child support expenses or dependent care expenses; therefore, the budget properly did not include a deduction for child support or dependent care expenses.

In calculating Petitioner's excess shelter deduction, the Department considered the \$275 rental expense that it had on file for Petitioner, as no changes were reported on the Semi-Annual. Petitioner confirmed that she is responsible for \$275 as her portion of the monthly rent, with her roommate paying the remaining portion. The Department stated that it did not have a lease or other sufficient documentation to apply the full amount of the rental obligation towards Petitioner's housing expenses, as her name was not on the lease.

Department policy provides that the Department is to allow a shelter expense such as housing costs when the FAP group has a shelter expense or contributes to the shelter expense. The Department is not to prorate the shelter expense even if the expense is shared. BEM 554, p. 12-14. Although the Department is to consider the full amount of Petitioner's monthly rent as a housing expense, because the Department did not have sufficient verification of such expense, the Department properly applied Petitioner's portion of \$275. Petitioner is informed that should she provide the Department with sufficient verification of the full monthly rental obligation for her apartment, the Department will recalculate her FAP budget and include the correct housing expense.

The Department also applied the \$124 non-heat electric standard and the \$34 telephone standard in calculating Petitioner's excess shelter deduction. The Department stated that Petitioner was not eligible for the \$553 heat and utility (h/u) standard in calculating the excess shelter deduction because she is not responsible for heating costs.

Department policy provides that the \$553 mandatory heat and utility (h/u) standard is available only for FAP groups (i) that are responsible for heating expenses separate from rent or mortgage; (ii) that are responsible for cooling (including room air conditioners); (iii) whose heat is included in rent or fees **if** the client is billed for excess heat, has received the home heating credit in an amount greater than \$20 in the current month or the immediately preceding 12 months, or has received a Low-Income Home Energy Assistance Act (LIHEAP) payment or a LIHEAP payment was made on his behalf; (iv) whose electricity is included in rent or fees **if** the landlord bills the client separately for cooling; or (v) who have any responsibility for heating/cooling expense. BEM 554, pp. 16-19; RFT 255, p. 1. 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 that the FAP group has responsibility to pay. BEM 554, p. 19.

At the hearing, Petitioner confirmed her responsibility for non-heat electric and telephone expenses. Petitioner stated that the heat in her home runs on an old system and that her home is heated through electricity. BEM 554 states that a FAP group which has a heating expense or contributes to the cost of a heating expense separate from rent must use the h/u standard and the Department will verify the heating expense or contribution by reviewing: current bills or a written statement from the provider for heating/cooling expense; making a collateral contact with the landlord or heating/cooling provider; reviewing cancelled checks, receipts or money order copies, if current and if the receipt contains minimum information to 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; a DHS-3688, Shelter Verification; or current lease. BEM 554, pp.14-20. There were no changes reported on Petitioner's Semi-Annual and it was unclear whether the Department requested that Petitioner submit verification of her heating expense obligation or whether the Department was aware of such expense. Thus, it remained unclear if the Department properly excluded the \$553 h/u standard from the calculation of Petitioner's excess shelter deduction.

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 based on the errors in the calculation of Petitioner's earned income, earned income deduction, and excess shelter deduction, the Department did not act in accordance with Department policy when it determined that Petitioner was eligible for \$16 in monthly 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. Recalculate Petitioner's FAP budget for September 1, 2015, ongoing;
2. Issue FAP supplements to Petitioner from September 1, 2015, ongoing; and
3. Notify Petitioner in writing of its decision.



Zainab Baydoun
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **10/26/2015**

Date Mailed: **10/26/2015**

ZB / tlf

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]