

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

IN THE MATTER OF:



MAHS Reg. No.: 15-015868
Issue No.: FAP
Agency Case No.: [REDACTED]
Hearing Date: [REDACTED]
County: Livingston County DHHS

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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, an in-person hearing¹ was held on [REDACTED], from Howell, Michigan. [REDACTED], the Petitioner, appeared on her own behalf. The Department was represented by [REDACTED], Eligibility Specialist, and [REDACTED], General Services Program Manager.

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 a recipient of FAP benefits.
2. Claimant's FAP case was due for Redetermination in [REDACTED]. (Department Exhibit A, p. 1)
3. On [REDACTED], Claimant submitted the completed Redetermination form. (Department Exhibit A, p. 1)
4. Claimant's daughter resides in the home and an SOLQ report available at the time of the Redetermination indicated she had been approved for Supplemental

¹ Claimant's FAP appeal was held in conjunction with 15-015870, the FAP appeal for Claimant's daughter that was scheduled for the same date and time. The parties agreed to incorporate the hearing records for both cases by reference because the case actions were related.

- Security Income (SSI) benefits beginning [REDACTED]. (Department Exhibit A, p. 1)
5. On [REDACTED], a Notice of Case Action was issued to Claimant stating FAP benefits were approved for \$ [REDACTED] per month effective [REDACTED], for a group size of two based on the household income and expenses. (Department Exhibit A, pp. 4-7)
 6. On [REDACTED], a Notice of Case Action was issued to Claimant stating the FAP benefits would decrease to [REDACTED] per month effective [REDACTED], for a group size of two based on the household income and expenses. (Department Exhibit A, pp. 11-14)
 7. On [REDACTED] a FAP application was submitted for Claimant's daughter to have her own FAP case as Claimant's daughter turned [REDACTED] on [REDACTED]. (Department Exhibit B, pp. 3-24)
 8. On [REDACTED], a Notice of Case Action was issued to Claimant stating the FAP benefits would increase to [REDACTED] per month effective [REDACTED], for a group size of one based on the household income and expenses. (Department Exhibit A, pp. 16-19)
 9. On [REDACTED] a Notice of Case Action was issued to Claimant stating the FAP benefits would decrease to [REDACTED] per month effective [REDACTED], for a group size of one based on the household income and expenses. A correction of benefits section was added to this notice stating the Department determined that Claimant was owed [REDACTED] of FAP benefits for the period of J [REDACTED] [REDACTED]. (Department Exhibit A, pp. 21-25)
 10. On [REDACTED], a Notice of Case Action was issued to Claimant stating the FAP benefits would increase to \$166.00 per month effective [REDACTED], for a group size of one based on the household income and expenses. (Department Exhibit A, pp. 27-30)
 11. On [REDACTED] Claimant filed a hearing request contesting the Department's determination. (Department Exhibit A, p. 2)

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. In calculating the FAP budget, the entire amount of earned and unearned countable income is budgeted. Every case is allowed the standard deduction shown in RFT 255. BEM 550, (July 1, 2015), pp. 1. 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. FAP groups that qualify for the h/u standard do not receive any other individual utility standards. 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. However, FAP groups who have received a home heating credit (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. FAP groups who have received a Low Income Home Energy Assistance Payment (LIHEAP) payment or a LIHEAP payment was made on their behalf in an amount greater than \$20 in the application month or in the immediately preceding 12 months prior to the application month are eligible for the h/u standard. 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. Use the individual standard for each utility the FAP group has responsibility to pay. BEM 554, pp. 14-23.

The Department counts the gross amount of current Social Security Administration (SSA) issued SSI as unearned income. BEM 503, (July 1, 2015), p. 32.

Retroactive SSI benefits may be paid as a one-time payment or in installments over several months. SSA determines how the retroactive benefits will be paid. Retroactive SSI benefits are considered assets whether paid as a one-time payment or as installment payments. An individual may receive a payment that includes a portion intended as current benefits as well as a portion intended as retro-active benefits. The portion intended as current benefits is income. BEM 503, pp. 32-33.

State SSI Payments (SSP) are issued quarterly. The Department counts the corresponding monthly SSP benefit amount as unearned income. BEM 503, p. 33.

The Department counts Veterans' Benefits as unearned income. BEM 503, pp. 35-38.

Parents and their children under [REDACTED] who live together must be in the same group regardless of whether the child(ren) have their own spouse or child who lives with the group. Note: For ongoing and intake applications where the child(ren) are not yet 22, they are potentially eligible for their own case, the month after turning 22. BEM 212, (July 1, 2014), p. 1.

Claimant's FAP case was due for Redetermination in [REDACTED]. (Department Exhibit A, p. 1) Accordingly, the changes to the FAP case based on the Redetermination were effective at the start of the new certification period, [REDACTED].

Claimant asserted that her daughter should have been removed from her FAP group for [REDACTED] because her daughter turned 22 years old on [REDACTED]. (See also (Department Exhibit B, p. 5) However, the above cited BEM 212 policy is clear that children become potentially eligible for their own FAP case the month after turning 22. Accordingly, Claimant's daughter was not potentially eligible for her own FAP case until [REDACTED].

The Department indicated that the initial FAP determinations that were to be effective starting [REDACTED], were in error. There was an error with including SSI income for Claimant's daughter that was subsequently confirmed with SSA as being only retroactive SSI benefits. Further, Claimant's daughter was removed from Claimant's FAP case to have her own FAP case based on the FAP application filed [REDACTED]. The [REDACTED], Notice of Case Action first showed Claimant's FAP group size was adjusted to one individual. (Department Exhibit A, pp. 16-19) Further, the [REDACTED] Notice of Case Action, in part, noted the correction of benefits stating the Department determined that Claimant was owed [REDACTED] of FAP benefits for the period of [REDACTED]. (Department Exhibit A, pp. 21-25)

The Department's evidence establishes that corrections and updates were made to the FAP group composition, income, and shelter expenses as additional information was received and/or verified. However, the evidence shows there is still an error regarding Claimant's income in the FAP budgets. For example, the corrected FAP budget for [REDACTED] shows \$ [REDACTED] was entered for Claimant's income. It was uncontested that Claimant was receiving \$ [REDACTED] in Veterans' benefits. It was uncontested that Claimant receives a corresponding monthly SSP benefit of \$ [REDACTED]. However, the Department was also including \$ [REDACTED] from the federal SSI benefit. (Eligibility Specialist Testimony) Claimant testified that as of [REDACTED] she was no longer receiving any monthly SSI benefit. Claimant submitted a [REDACTED], letter from SSA confirming that her SSI benefit payments were being withheld to recover and overpayment, therefore, for the period of [REDACTED] through [REDACTED] only \$ [REDACTED] total would be issued. Specifically, \$ [REDACTED] was issued for [REDACTED] was issued for [REDACTED], and \$ [REDACTED] was issued for [REDACTED]. (Claimant Exhibit 5 1, pp 1-2) It is noted that this September 25, 2015, letter would not have been available to the Department at the time the FAP determinations at issue for this appeal were made. However, Claimant testified that she previously provided the Department

with other verification that she was not getting any monthly SSI benefit issued as of [REDACTED]. The FAP determinations cannot be upheld as there is a \$ [REDACTED] error with Claimant's income in the corrected FAP budgets.

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 [REDACTED], 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 Signed: [REDACTED]

Date Mailed: [REDACTED]

[REDACTED]

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:

