

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

IN THE MATTER OF:

[REDACTED]

MAHS Reg. No.: 15-017445
Issue No.: 3008
Agency Case No.: [REDACTED]
Hearing Date: January 07, 2016
County: Kalamazoo

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 hearing was held on January 7, 2016, from Kalamazoo, Michigan. [REDACTED], the Petitioner appeared on her own behalf. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearing Facilitator.

ISSUE

Did the Department properly determine the amount of Petitioner'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. Petitioner is an ongoing FAP recipient.
2. On August 19, 2015, and August 24, 2015, Petitioner submitted applications for two other programs, cash assistance and State Emergency Relief (SER). (Department Exhibits A and C, pp. 3-6 and 9-15)
3. On the August 24, 2015, cash assistance and application, Petitioner reported that she had medical expenses. (Department Exhibit C, p. 13)
4. On August 24, 2015, the Department issued Petitioner a Verification Checklist for SER allowing eight calendar days beginning with the date of application to provide the requested verifications for the home being

- livable, home ownership, and amount of the home repairs. (Department Exhibit C2, pp. 18-19)
5. On August 24, 2015, the Department issued Petitioner a Verification Checklist for FAP allowing 10 days to provide the requested verifications for property taxes, septic sewer maintenance, and mortgage, but did not include a request for verification of the reported medical expenses. (Department Exhibit C3, pp. 20-21)
 6. Petitioner testified she never received the FAP verification checklist. (Petitioner Testimony)
 7. The requested verifications for FAP were not submitted by the due date. (Hearing Facilitator Testimony)
 8. On September 8, 2015, a Notice of Case Action was issued to Petitioner stating her FAP monthly allotment would decrease to \$█ effective October 1, 2015, based on a failure to provide proof of property tax expense. The budget summary shows that no housing cost expenses were included. (Department Exhibit E, pp. 24-25)
 9. Effective October 1, 2015, the amount allowed for the full heat and utility standard deduction for FAP decreased to \$█ (RFT 255, October 1, 2015, p. 1)
 10. On September 12, 2015, a Notice of Case Action was issued to Petitioner stating her FAP monthly allotment would decrease to \$█ effective October 1, 2015. The new budget summary shows that the only change was the change with the standard deduction for heat and utility expenses that went into effect October 1, 2015. (Department Exhibit F, pp. 26-27)
 11. On September 14, 2015, Petitioner submitted property tax records showing there has been \$0 in property tax since the 2013 summer taxes. (Department Exhibit G, pp. 29-31)
 12. The Department did not add any housing expense back into Petitioner's FAP budget based on the information shown on the property tax verification.
 13. On September 18, 2015, Petitioner called the Department and requested a hearing contesting the Department's determination for FAP¹. (Department Exhibit H, p. 32)

¹ While the Department wrote that Petitioner requested a hearing for both FAP and SER, Petitioner testified that she was only contesting the FAP case action. Additionally, pursuant to BAM 600, April 1, 2015, p. 2, an oral hearing request can only be made for the FAP program. All other requests for hearing must be made in writing.

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.

For all programs, verification is usually required at application/redetermination and for a reported change affecting eligibility or benefit level. BAM 130, (July 1, 2015), p. 1. For FAP, the Department is to allow the client 10 calendar days (or other time limit specified in policy) to provide the verification that is requested. BAM 130, p. 6)

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, (October 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, 2015), p. 12. Heat and utility expenses can also be included as allowed by policy. The Department allows 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. The Department is to use the individual standard for each utility the FAP group has responsibility to pay. BEM 554, pp. 14-23. Verified allowable medical expenses that exceed \$35 may also be considered in the FAP budget. Potentially allowable medical expenses include not only Medicare premiums, but also: medical and dental services; costs of medical supplies and equipment; and prescription drugs and over the counter medications. BEM 554, p. 1 and 8-12.

The evidence shows that the Department primarily reduced Petitioner's FAP monthly allotment based on a failure to provide requested housing cost verification. (Hearing Facilitator Testimony and Department Exhibit E, pp. 24-25) The second and much smaller reduction was based on a policy change reducing the amount allowed for the full heat and utility standard deduction for FAP cases. (Hearing Facilitator Testimony and Department Exhibit F, pp. 26-27). The policy change is set forth in RFT 255, October 1, 2015, p. 1. This ALJ has no authority to change or make any exceptions to the Department policies. Therefore, the review of this case will focus on the other issues with the FAP budget noted during the hearing proceedings.

When an individual reports a change that affects an eligibility factor, even if the report is made in reference to another program, the change should be verified and considered for all programs that consider that eligibility factor. As cited above, BAM 130, p. 1 states that verification is usually required at application/redetermination and for a reported change affecting eligibility or benefit level. Petitioner's August 2015 applications for cash assistance and SER prompted the Department to request verification of changes that would also affect her FAP eligibility. For example if there was a reported change in housing expenses on the cash assistance and SER applications, that change would have to be verified and considered for the housing costs for the ongoing FAP case as well for the cash assistance and SER applications. Petitioner's testimony indicated there had been a change in her housing expenses when she was granted a property tax exemption, which then changed her monthly mortgage expense.

The evidence indicates there were multiple requests for verifications issued for the various programs Petitioner applied for or received ongoing benefits for, with multiple due dates, and that some of the same types of verifications were requested on multiple Verification Checklists. This ALJ understands that the applicable policies set differing timeframes for providing verifications for SER than for other programs, such as FAP. See BAM 130, p. 6 and ERM 103, October 1, 2013, p. 6. For example, the Department submitted copies of two August 24, 2015, Verification Checklists for the differing programs with differing due dates. In part, each Verification Checklist indicates mortgage documentation would be an acceptable requested proof for one of the verifications being requested. (Department Exhibits C2 and C3, pp. 18-21) Petitioner testified that she only received the August 24, 2015, SER checklist and never received the August 24, 2015, FAP checklist. Further, Petitioner testified she did receive another Verification Checklist that only requested the property tax documentation. Additionally, Petitioner explained that she was verbally told an inaccurate timeframe for providing requested SER verifications by the Department worker; that during this time period she also went to be with her mother in hospice; and that her mother passed away on August 28, 2015.

Understandably, if Petitioner never received the August 24, 2015, FAP Verification Checklist, she would not have known to provide the requested verifications of her housing costs for the FAP case by the September 3, 2015 due date. (See Department Exhibit C33, pp. 20-21). As this document would have been issued by the Department's

central printing in Lansing, Michigan, the Hearing Facilitator was unable to provide more specific testimony about how and when this document was issued to Petitioner.

Overall, several incidents Petitioner described in her testimony were supported by documentation in the Department's case record. For example, Petitioner's testimony that during a phone conversation with the Department Worker she was told an inaccurate timeframe for providing the requested verifications for SER is supported by a note in the case comment summary. An August 24, 2015, phone call note entered by the Department Worker shows the Department worker told Petitioner that SER is a 10 day process in response to Petitioner's question regarding how long she had to get her proofs in. (Department Exhibit C1, p. 16) It appears the Department Worker was referencing the Department's 10 day standard of promptness for determining SER eligibility, rather than the policy stating the SER verification due date is eight calendar days beginning with the date of application. (See ERM 103, October 1, 2013, p. 6) That answer in response to Petitioner's question would have led Petitioner to believe that she would have 10 days to provide verifications for SER. Further, the case notes also document that Petitioner was calling the Department worker asking about the timeframe because of what was going on with her mother. (Department Exhibit C1, p. 16) Accordingly, Petitioner's testimony regarding what happened when the Department requested verifications is found credible.

However, it appears that despite the multiple verification requests that were issued, the Department failed to request any verifications of the medical expenses reported on at least the August 24, 2015, cash assistance and SER application. It is noted that only some of the pages of Petitioner's two August 2015, applications were included in the Department's exhibit packet. Therefore, it is not known if medical expenses were also reported on the August 19, 2015, application. (Department Exhibits A and C, pp. 3-6, and 9-15) Further, the Hearing Facilitator testified that the \$█ that was included in the FAP budget for medical expenses was an error. The Hearing Facilitator's review of the computerized case record during the hearing proceedings indicated the \$█ was for Medicare premiums which should not be included because Petitioner's Medicare premiums are being paid through the Medicare Saving Program (MSP).

It is also noted that property tax verification was submitted September 14, 2015. However, the Department did not add any housing cost back into Petitioner's FAP budget when it was received because this document showed there has been \$0 in property tax since the 2013 summer taxes. (See Department Exhibit G, pp. 29-31) Petitioner testified this verification was not accurate. Petitioner indicated the hardship exemption was only for that last year; she has paid additional property taxes not shown on this record; and that there have been issues with that office's records noting there is a second parcel. (Petitioner Testimony) Based on the information documented on the submitted verification, the Department properly did not add a housing cost back into the FAP budget at the time this verification was received. If she has not already done so, Petitioner may wish to provide the Department with an updated and accurate verification for the property taxes as well as any other allowable expenses such as her mortgage and medical expenses.

Overall, the evidence establishes that the FAP budget was not correctly calculated. At a minimum, the Department did not follow policy to verify and budget Petitioner's allowable reported medical expenses to include them in the FAP budget. The Department acknowledged and erred with including \$ [REDACTED] for Medicare premiums that are being paid though the [REDACTED] and failed to verify and consider potentially allowable medical expenses reported on at least the August 24, 2015, application for cash assistance and SER. Accordingly, the Department's determination cannot be upheld and Petitioner's FAP eligibility must be re-determined.

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 Petitioner'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 Petitioner's eligibility for FAP retroactive to the October 1, 2015, effective date, to include requesting any needed verifications, 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 Petitioner 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 Mailed: **1/15/2016**

CL/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:

