

**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.: 15-017782
Issue No.: 3008
Agency Case No.: [REDACTED]
Hearing Date: December 15, 2015
County: WASHTENAW (DISTRICT 20)

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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, an in-person hearing was held on December 15, 2015, from Ypsilanti, Michigan. [REDACTED], the Claimant, appeared on her own behalf. The Department of Health and Human Services (Department) was represented by [REDACTED], Assistance Payments Worker (APW); and [REDACTED], Family Independence Manager (FIM).

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 an ongoing FAP recipient.
2. As of October 1, 2015, some of the standards utilized in calculating the FAP budget changed. RFT 255, (October 1, 2015), p. 1.
3. On September 12, 2015, a Notice of Case Action was issued to Claimant stating the FAP benefits would decrease to \$16.00 per month effective October 1, 2015, for a group size of one based on the household income and expenses. (Department Exhibit A, pp. 5-6)

4. On September 25, 2015, Claimant filed a hearing request contesting the Department's determination. (Department Exhibit A, p. 3)

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, (October 1, 2015), pp. 1.

A shelter expense is allowed when the FAP group has a shelter expense or contributes to the shelter expense. Housing expenses include rent, mortgage, a second mortgage, home equity loan, required condo or maintenance fees, lot rental or other payments including interest leading to ownership of the shelter occupied by the FAP group. BEM 554, (October 1, 2015), pp. 12-13.

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 are also considered in the FAP budget. The limited list of allowable medical expenses, which includes: medical and dental care including psychotherapy and rehabilitation services provided by a licensed practitioner authorized by State law or other qualified health professional. BEM 554, p. 8-12.

As of October 1, 2015, the FAP standard deduction for a group size of 1-3 persons is \$[REDACTED]. The full heat and utility standard also changed to \$[REDACTED] as of October 1, 2015. RFT 255, (October 1, 2015), p. 1.

In this case, the Department explained that changes in the standards utilized in the FAP budget caused the decrease with Claimant's FAP monthly allotment. As noted above, RFT 255 was updated to list the applicable standards effective October 1, 2015. The Department witnesses testified that the only changes made to Claimant's FAP budget were the updated standards. (APW and FIM Testimony) The submitted documentation shows the Department appropriately utilized the updated standard deduction and full heat and utility standard amounts. (Department Exhibit A, pp. 6-8)

The other income and expense figures utilized in the FAP budget were reviewed with the parties during the hearing proceedings. The Department did not provide sufficient evidence to establish that all these figures were correct. Claimant's testimony confirmed that the income figure was accurate. However, the Department did not provide sufficient information to establish that the budgeted housing amount, \$96.89, was correct. (Department Exhibit A, pp. 6-8) The APW and FIM did not recall what this figure was based on. No documentation was included in the Department's Hearing Summary Packet supporting this amount, such as a copy of the verification the Department relied upon of Claimant's rent/mortgage/or other allowable housing expense. (See Department Exhibit A, pp. 1-8) While the APW offered to leave the hearing room to go look this information up, Claimant submitted documentation from the bank of her home equity loan with a monthly payment amount of \$[REDACTED]. This amount has not changed since 2007, when Claimant testified she first provided verification of this expense to the Department. (Claimant Exhibit A, p. 1-10) Under the above cited policy, home equity loans are allowable housing expenses. Accordingly, the evidence establishes that the budgeted housing expense was not accurate.

Additionally, Claimant asserted that the Department failed to include medical expenses. Claimant provided a statement from the office of Dr. Robert J Flewelling PsyD PLLC." (Claimant Exhibit A, pp. 11-17) The Department policy sets for the limited list of allowable medical expenses, which includes: medical and dental care including psychotherapy and rehabilitation services provided by a licensed practitioner authorized by State law or other qualified health professional. BEM 554, p. 9. It is not clear from the available documentation that all of the services from this provider's office would be allowable. For example, the older entries for "therapy sessions" appear to meet the allowable medical expense criteria. It is less clear that the current entries for "consultation/life coaching" would also meet the allowable medical expense criteria. Lastly, Claimant's testimony indicated she provided the Department with verification of

these expenses on November 30, 2015, which was well after the September 12, 2015, case action at issue for this hearing occurred.

Overall, the evidence establishes that at least the housing expense was not accurately included in the FAP budget. Therefore, Claimant's FAP budget must be re-calculated.

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 failed to satisfy its burden of showing that it acted 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 October 1, 2015, 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: **12/18/2015**

Date Mailed: **12/18/2015**

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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:

