

**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.: 15-020000
Issue No.: 3008, 2001
Agency Case No.: [REDACTED]
Hearing Date: January 04, 2016
County: Macomb (20) Warren

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 4, 2016, from Warren, Michigan. The Petitioner was represented by herself and her Authorized Hearing Representative (AHR), [REDACTED]. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearing Facilitator.

ISSUE

1. Did the Department properly calculate the Petitioner's Food Assistance Program (FAP) benefits?
2. Did the Department properly determine Petitioner's eligibility for Medical Assistance (MA) and the Medicare Savings Program?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Petitioner receives Retirement, Survivors and Disability Insurance (RSDI) in the amount of \$ [REDACTED] and Supplemental Security Income (SSI) in the amount of \$ [REDACTED]
2. The Petitioner filed a Shelter Verification on October 16, 2015, completed by the co-owner/landlord of the property indicating that she paid rent in the amount \$ [REDACTED] and that no utilities were included in the rent. Exhibit 5.

3. On October 8, 2015, the Department filed a Notice of Case Action decreasing the Petitioner's FAP benefits to \$ [REDACTED] a month effective November 1, 2015. Exhibit 1.
4. The Department issued a Notice of Case Action on October 20, 2015, reducing the Petitioner's FAP to \$ [REDACTED] per month. The Department used unearned income of \$ [REDACTED] and rent of \$ [REDACTED] and a telephone expense of \$ [REDACTED] Exhibit 2.
5. The Petitioner receives unearned income from RSDI in the amount of \$ [REDACTED] and SSI in the amount of \$ [REDACTED] for a total unearned income of \$ [REDACTED]
6. The Petitioner filed a hearing request on October 28, 2015, protesting the reduction of her FAP benefits.
7. On November 25, 2015, the Petitioner filed another hearing request regarding the reduction of her FAP benefits and her MA benefit eligibility.

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.

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

In this case, the Petitioner challenged the reduction by the Department of her FAP benefits. A review of the Notices of Case action dated October 8, 2015, reducing her FAP benefits to \$ [REDACTED] per month and another Notice on October 20, 2015, reducing the Petitioner's FAP benefits to \$ [REDACTED] Exhibits 1 and 2. At the hearing, the Department conceded that the Department used the incorrect rent based upon the Shelter Verification signed by the Petitioner's landlord indicating the Petitioner's rent was \$ [REDACTED]. In addition, the Petitioner's roommate and AHR testified that Petitioner paid her share of the utilities including heat. Based upon this evidence, the Department

must recalculate the FAP benefits and use the correct verified rent and utility allowance. The Department presented no evidence such as the redetermination or testimony of the caseworker assigned to the case and thus the testimony of the Petitioner, which was credible was not rebutted. In addition, the Petitioner's unearned income was \$ [REDACTED] not \$ [REDACTED] which was also not explained. It was unclear from the record presented by the Department whether the Petitioner received the State Quarterly supplement and whether that amount (\$ [REDACTED] per month) was included in the rent. Based upon these discrepancies, the Department did not meet its burden of proof to demonstrate that the FAP benefits were properly reduced.

Lastly, although a redetermination was not presented, the Department Representative indicated that the change was based upon a redetermination; the Petitioner's AHR noted it was a semiannual review. Notwithstanding this discrepancy, the Department should have sought verification of the heating expense because Department policy requires that if the FAP group, which in this case is the Petitioner, has **any** responsibility for the heating/cooling expense, the h/u standard is to be used. The Department is to verify heating/cooling expense at application, redetermination or when a change is reported. The Department provided no evidence that it sought any verification from the Petitioner after receiving the Shelter Verification which indicated that the rent did not include utilities (heat), and thus, did not comply with Department policy as no proof that verification was sought was presented at the hearing. BEM 554 (October 2015) p. 16.

An additional issue appears to have been included in the supplement provided to the Petitioner and the undersigned, which included a Request for Hearing dated November 25, 2015, regarding two Health Care Coverage Determinations, which conflicted and were determined by the undersigned to be part of the hearing request as they were provided as additional information for the hearing. See Exhibits 3 and 4. The Department did not provide information regarding the status of the Petitioner's MA benefits, and thus, did not meet its burden of proof.

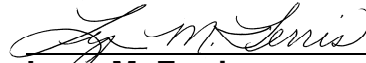
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with Department policy when it reduced the Petitioner's FAP benefits and did not properly calculate the benefits. The Department also failed to satisfy its burden of showing that it acted in accordance with Department policy when it reviewed the Petitioner's MA.

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. The Department shall recalculate the Petitioner's FAP benefits for November 1, 2015, ongoing.
2. The Department shall issue an FAP supplement to the Petitioner, if Petitioner is entitled to a supplement based upon the recalculation of the Petitioner's FAP benefit in accordance with Department policy.
3. The Department shall review the Petitioner's MA eligibility and advise the Petitioner in writing with regard to the Petitioner's current MA benefits and Medicare Savings Plan eligibility.



Lynn M. Ferris

Administrative Law Judge

for Nick Lyon, Director

Department of Health and Human Services

Date Mailed: **1/13/2016**

LMF/jaf

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:

