

**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.: 15-020246
Issue No.: 4000, 3008
Agency Case No.: [REDACTED]
Hearing Date: December 16, 2015
County: Wayne (57) Conner

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, a telephone hearing was held on December 16, 2015, from Detroit, Michigan. The Petitioner was represented by the Petitioner, [REDACTED]. The Department of Health and Human Services (Department) was represented by [REDACTED], Eligibility Specialist; and [REDACTED] Assistance Payments Supervisor.

ISSUE

1. Did the Department properly calculate the Petitioner's Food Assistance Program (FAP) benefits?
2. Was the Petitioner's hearing request regarding denial of his April 27, 2015, State Emergency Relief (SER) application timely?

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 applied for SER on April 27, 2015. The Department issued a SER Decision Notice on May 7, 2015. Exhibit 1. The Petitioner requested a hearing regarding the SER denial on October 26, 2015, which is more than 90 days after the SER Decision Notice.
2. The Petitioner is a current recipient of FAP benefits in the amount of \$ [REDACTED] monthly. Exhibit 4.

3. The Petitioner receives Supplemental Security Income (SSI) in the amount of \$ [REDACTED] and Retirement, Survivors and Disability Insurance (RSDI) in the amount of \$ [REDACTED] Exhibit 5 and Petitioner Exhibit 1. The \$ [REDACTED] in SSI is the amount after a \$ [REDACTED] deduction for overpayment by Social Security Administration (SSA). The Petitioner also receives \$ [REDACTED] monthly in quarter supplement. The total countable unearned income received by Petitioner is \$ [REDACTED]
4. The Petitioner is an FAP group of one person. The Petitioner pays rent of \$ [REDACTED] monthly and was granted credit for \$ [REDACTED] phone allowance although the Petitioner does not pay for a telephone now. The Petitioner pays for water in the amount of \$ [REDACTED] monthly but did not verify this expense with the Department.
5. The Petitioner requested a hearing on October 26, 2015, protesting the Department's actions.

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 State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by the Department (formerly known as the Department of Human Services) pursuant to MCL 400.10 and Mich Admin Code, R 400.7001-.7049.

SER HEARING REQUEST

Regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in Mich Admin Code, R 792.10101 to R 792.10137 and R 792.11001 to R 792.11020. Rule 792.11002(1) provides that “[a]n opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance is denied or is not acted upon with reasonable promptness [or] has received notice of a suspension or reduction in benefits.” However, the Department of Health and Human Services Bridges Administrative Manual (BAM) 600 (April 2015), p. 6 provides that a request for hearing must be received in the Department local office within 90 days of the date of the written notice of case action.

In the present case, the Department sent Petitioner a Notice of Case Action on May 7, 2015, denying the Petitioner's SER application for rent relocation. Exhibit 1. Petitioner did not file a request for hearing to contest this Department action until October 26, 2015, which was more than 90 days after the SER Decision Notices.

Petitioner's hearing request was not timely filed within 90 days of the SER Decision Notice and is, therefore, **DISMISSED** for lack of jurisdiction as it is untimely.

FOOD ASSISTANCE ALLOTMENT.

In this case, the Department increase the Petitioner's FAP benefit to \$█. The Petitioner sought a review of the benefit amount as he thought it was incorrect and did not understand how it was calculated. Exhibit 4.

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 2014), pp. 1 – 4. The Department considers the gross amount of money earned from SSI and RSDI in the calculation of unearned income for purposes of FAP budgeting. BEM 503 (July 2014), pp. 31-32. The Petitioner receives \$█ in income from SSI, RSDI and a quarterly supplement from the State of \$█ per month. In calculating the Petitioner's FAP benefits, the Department used the correct income. Exhibits 2 and 5.

The deductions to income on the net income budget were also reviewed. Petitioner is the only member of his FAP group and is a senior/disabled/veteran (SDV) member of the group. BEM 550 (February 2014), pp. 1-2. Groups with one or more SDV members are eligible for the following deductions to income:

- Dependent care expense.
- Excess shelter.
- Court ordered child support and arrearages paid to non-household members.
- Medical expenses for the SDV member(s) that exceed \$35.
- 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.

In this case, Petitioner did not have any earned income; and there was no evidence presented that he had any dependent care, child support, or medical expenses over \$█. The Petitioner was specifically asked if he paid Medicare Part B premiums, and it was determined he did not. Therefore, the budget properly did not include any deduction for earned income, dependent care expenses, child support, or medical expenses. Based on his confirmed one-person group size, the Department properly applied the \$█ standard deduction. RFT 255 (October 2014), p. 1.

In this case, the Department increased the Petitioners FAP benefits to \$█ on November 1, 2015, after a review. The following facts were confirmed as correct by Petitioner during the hearing, and the FAP budget was reviewed. The Petitioner

receives RSDI in the amount of \$ [REDACTED] SSI of \$ [REDACTED] and a quarterly supplement from the State of \$ [REDACTED] per month and pays rent of \$ [REDACTED] Petitioner Exhibit A and Exhibit 3. The Petitioner does not pay for heat and electricity. The Petitioner received and is entitled to a standard deduction off his income of \$ [REDACTED] as his FAP group has one member and received a phone allowance expense of \$ [REDACTED] as the Department did not request any update regarding this expense, which the Petitioner no longer pays. In addition, the Petitioner pays \$ [REDACTED] a month for water expenses but did not advise the Department of this expense or provide verification of the water bill. The FAP budget was reviewed at the hearing and is determined to be correct. Exhibit B. BEM 554, (October 2015), pp. 16-19. BEM 556 (July 1, 2013) pp. 4-5; RFT 255, p. 1.

The Department correctly deducted a standard deduction from the Petitioner's income of \$ [REDACTED] for a group of one person leaving adjusted gross income of \$ [REDACTED]. The Department also correctly determined the excess shelter amount to be \$ [REDACTED]. The excess shelter is determined by adding rent of \$600 and phone expense of \$ [REDACTED] to get total housing expense of \$ [REDACTED] (\$ [REDACTED]). RFT 255, (October 1, 2015) p.1. The next step is to deduct one half of the adjusted gross income from the housing expenses. In this case, adjusted gross income is \$ [REDACTED] so half that amount is \$ [REDACTED] (\$ [REDACTED]). The Department correctly determined the excess shelter expense to be \$ [REDACTED]. The excess shelter expense (\$ [REDACTED]) is then deducted from the adjusted gross income (\$ [REDACTED]) to get net income, which in this case was determined correctly to be \$ [REDACTED] (\$ [REDACTED]). An FAP group of one person with net income of \$ [REDACTED] is entitled to \$ [REDACTED] in FAP benefits. RFT 260, (October 1, 2015) p.1.

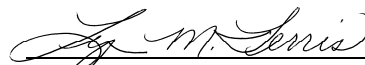
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department acted in accordance with Department policy when it calculated the Petitioner's FAP benefits.

DECISION AND ORDER

Accordingly, the Department's decision regarding the amount of FAP benefits is **AFFIRMED**.

The Petitioner's Request for Hearing dated received by the Department on October 26, 2015, regarding the Department's denial of SER is **DISMISSED AS UNTIMELY**.

IT IS SO ORDERED.



Lynn M. Ferris

Administrative Law Judge
for Nick Lyon, Director

Department of Health and Human Services

Date Mailed: **12/16/2015**

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:

