

**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.: 15-020629
Issue No.: 3008
Agency Case No.: [REDACTED]
Hearing Date: December 21, 2015
County: MACOMB-DISTRICT 20
(WARREN)

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 21, 2015, from Detroit, Michigan. Petitioner appeared and represented himself. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearing Facilitator.

ISSUE

Did the Department properly calculate Petitioner's Food Assistance Program (FAP) benefits?

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 was an ongoing recipient of FAP benefits.
2. In connection with a FAP redetermination, the Department sent Petitioner a verification checklist.
3. Petitioner timely submitted the requested verifications.
4. On [REDACTED], the Department sent Petitioner a Notice of Case Action notifying him that his FAP case would close effective [REDACTED] because he had failed to verify his checking account (Exhibit I).

5. The Department subsequently became aware that Petitioner had timely submitted all requested verifications, and processed his redetermination.
6. Petitioner is the only member of his FAP group.
7. Petitioner is eligible for gross monthly Supplemental Security Income (SSI) totaling \$585.97, which is reduced by \$15 for recovery of an overpayment (Exhibit B), and he receives a quarterly \$42 payment for State SSI Payment (SSP).
8. Petitioner also receives a \$167.03 gross monthly pension payment (Exhibit C).
9. Petitioner pays monthly rent of \$121 and he is responsible for heating expenses (Exhibit E).
10. On [REDACTED] the Department sent Petitioner a Notice of Case Action approving him for monthly FAP benefits of \$122 (Exhibit J).
11. On [REDACTED], the Department received Petitioner's timely hearing request disputing the decrease in his FAP benefits. On [REDACTED], the Department received Petitioner's timely hearing request concerning the closure of his FAP case.

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 Department sent Petitioner a Notice of Case Action on [REDACTED], notifying him that his FAP case would close effective [REDACTED] because he had failed to verify requested information. On [REDACTED], the Department received Petitioner's hearing request disputing the closure of his FAP case due to his failure to verify. However, the Department had, prior to receiving this hearing request, concluded that Petitioner had timely submitted the requested verifications. Accordingly, it processed his redetermination, and on [REDACTED], sent him a Notice of Case Action notifying him that he was approved for \$122 in monthly FAP benefits effective

██████████. On ██████████, the Department received Petitioner's hearing request disputing the reduction in his FAP benefits. The evidence at the hearing showed that Petitioner received no interruption in FAP benefits (Exhibit H). At the hearing, Petitioner confirmed that his FAP case was open and the only issue remaining concerning his FAP benefits was the decrease in monthly benefits to \$122. The hearing proceeded to address the issue of the amount of FAP benefits.

At the hearing, the FAP net income budget for November 2015, ongoing, used by the Department in calculating Petitioner's \$122 monthly FAP allotment (Exhibit F) was reviewed with Petitioner. The budget showed gross monthly unearned income of \$752. The Department testified that this was the sum of Petitioner's SSI benefits of \$570.97, his \$167.03 gross monthly pension; and the \$14 in SSP income. Because the Social Security Administration withheld \$15 from Petitioner's gross monthly SSI to repay an overpayment and there was no evidence that these withheld funds were due to an intentional program violation, the Department properly considered \$570.97 in calculating Petitioner's income from SSI. See BEM 500 (July 2015), p. 5. Based on Petitioner's receipt of quarterly \$42 SSP benefits, for FAP budget purposes, the Department properly considered \$14 towards Petitioner's gross monthly SSP allotment. BEM 503 (October 2015), p. 33. Because the sum of Petitioner's monthly SSI of \$570.97, pension income of \$167.03, and SSP of \$14 total \$752, the Department properly calculated Petitioner's gross unearned income in the budget.

Because Petitioner is over age 60, he is a senior/disabled/veteran (SDV) member of his FAP group. See BEM 550 (October 2015), pp 1-2. FAP groups with one SDV member and no earned income are eligible for the following deductions from the group's total income:

- Standard deduction of \$154.
- Dependent care expense.
- Excess shelter.
- Court ordered child support and arrearages paid to non-household members.
- Verified, out-of-pocket medical expenses for the SDV member that exceed \$35.

BEM 554 (October 2015), p. 1; RFT 255 (October 2015), p. 1.

The budget showed the \$154 standard deduction applicable to Petitioner's case. Petitioner confirmed that he had no day care or child support expenses, as shown on the budget. The client's excess shelter deduction is based on his monthly shelter expenses and the applicable utility standard for any utilities he is responsible to pay. BEM 556, pp. 4-5. The excess shelter deduction budget presented by the Department shows that, in calculating Petitioner's excess shelter deduction, the Department applied the \$121 rent as the monthly shelter expenses, which Petitioner verified was his monthly rent, and used the \$539 mandatory heat and utility standard, the most

favorable utility standard available to a client. BEM 554, pp. 14-15; RFT 255, p. 1. Therefore, the Department applied the correct rent and utility expense in calculating Petitioner's excess shelter deduction.

The final deduction available to Petitioner was the medical expense deduction. An SDV member's allowable out-of-pocket medical expenses over \$35 that are not overdue are valid deductions to the member's FAP budget. BEM 554, p. 8. The expenses must be incurred, or reasonably expected to be incurred, during the client's benefit period. BEM 554, pp. 8-9.

In this case, Petitioner reported in his redetermination that he saw six doctor's regularly and paid for transportation costs. Allowable medical expenses for FAP purposes includes the actual cost of transportation and lodging necessary to secure medical treatment or services and, if actual transportation costs cannot be determined, the cents-per-mile amount allowed at the standard mileage rate for a privately owned state vehicle as shown at michigan.gov under the Michigan Department of Management and Budget tab. BEM 554, p. 10. Because Petitioner identified these allowable medical expenses on his redetermination, the Department was required to request verification of those expenses from Petitioner and, pursuant to policy, consider any verified expenses in excess of \$35 monthly in calculating Petitioner's FAP benefits. See BAM 210 (October 2015), p. 15. Because the Department failed to request verification of these expenses, the Department did not act in accordance with Department policy when it processed Petitioner's redetermination.

It is noted that at the hearing, Petitioner also testified that he was disabled and had a housekeeper. Allowable medical expenses include the cost of employing a housekeeper due to age, infirmity or illness. BEM 554, p. 10. While Petitioner's expense for a housekeeper may be an allowable expense, because Petitioner did not advise the Department of this expense prior to the hearing, the Department acted in accordance with policy when it failed to consider this expense in calculating Petitioner's FAP benefits for November 2015 ongoing. Petitioner is advised that he can submit verified housekeeper expenses to possibly affect future FAP benefits.

At the hearing, Petitioner also expressed concerns that, pending the hearing decision, the Department had failed to continue his FAP benefits at the same level he had been receiving prior to being notified of the FAP reduction. Because the reduced FAP benefits followed the expiration of one certification period and authorization of a new certification period, Petitioner was not entitled to continued FAP benefits at the level authorized prior to the notice of the reduced benefits.

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 failed to seek verification of Petitioner's transportation expenses in connection with calculating his medical expense deduction and, consequently, his FAP budget.

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. Request verification of Petitioner's medical transportation expenses;
2. If verification is timely received and shows monthly allowable expenses in excess of \$35, recalculate Petitioner's FAP budget for November 2015 ongoing;
3. Issue supplements to Petitioner for any FAP benefits Petitioner was eligible to receive but did not from [REDACTED], ongoing; and
4. Notify Petitioner in writing if he is eligible to receive any FAP supplement.



Alice C. Elkin
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **12/29/2015**

Date Mailed: **12/29/2015**

ACE / hw

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:

