

**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.: 15-022847
Issue No.: 3008
Agency Case No.: [REDACTED]
Hearing Date: January 06, 2016
County: OAKLAND 4

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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. After due notice, telephone hearing was held on January 6, 2016, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED], [REDACTED], the Claimant's aunt, and his authorized hearings representative [REDACTED] of [REDACTED]. [REDACTED] (Assistance Payments Supervisor) represented the Department of Health and Human Services (Department). Witnesses on behalf of the Department included [REDACTED] (Eligibility Specialist).

The Department received two requests for hearings from the Claimant (REG 15-021455 and REG 15-022847) and these hearing requests were combined into one hearing.

ISSUE

Did the Department of Health and Human Services (Department) properly determine the Claimant's eligibility for 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. The Claimant is an ongoing Food Assistance Program (FAP) recipient.
2. On November 12, 2013, the Department sent the Claimant a Redetermination (DHS-1010) where he reported that he has an obligation to pay \$ [REDACTED] each month for heating expenses.
3. The Claimant requested a hearing (REG 20141993), which was scheduled for December 30, 2013, but dismissed when the Claimant failed to attend this hearing.

4. The Department's actions, which had been suspended pending the December 30, 2013, hearing, were not restored following the dismissal of the Claimant's request for a hearing.
5. The Claimant received Food Assistance Program (FAP) benefits in the monthly amount of \$ [REDACTED] from August 1, 2014, through September 30, 2015.
6. On November 19, 2015, the Department notified the Claimant that his monthly allotment of Food Assistance Program (FAP) benefits would be reduced to \$ [REDACTED] effective November 1, 2015.
7. On November 30, 2015, the Department received the Claimant's request for a hearing protesting the amount of Food Assistance Program (FAP) benefits he has been awarded by the Department.

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 Food Assistance Program (FAP) groups that received the heat and utility standard on or before February 7, 2014, the heat and utility standard will remain in place for a period of five months after the month of their first redetermination or first reported case change occurring on or after May 1, 2014. In order to continue receiving the heat and utility standard beyond the expiration of the five month period, the Food Assistance Program (FAP) group must meet the requirements of the mandatory heat and utility standard section. Department of Human Services Bridges Eligibility Manual (BEM) 554 (October 1, 2015), p 15.

A party may request a rehearing or reconsideration of a Hearing Decision from MAHS within 30 days of the mailing date of this Hearing Decision. A party may appeal a 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. In this case, the Claimant failed to appeal the dismissal of his December 30, 2013, hearing. Therefore, the Claimant's is not entitled to a hearing concerning the prior hearing request.

Before May 1, 2014, the Department granted all FAP recipients a standard heat and utility deduction towards their eligibility for FAP benefits regardless of whether they had this expense. After May 1, 2014, the Department changed its policy and began to require verification of a monthly obligation for heating and cooling expenses. The Department's policy included a provision that it would only enforce this new requirement for new FAP applicants, FAP recipients that reported a change to their circumstances, or five months after a FAP recipient's first redetermination of eligibility. BEM 554.

The Claimant had requested a hearing protesting his FAP benefits but failed to attend his hearing on December 30, 2013. Since the Claimant's hearing request was received by the Department in a timely manner, the Department pended the negative action that the Claimant was protesting. Due to Department error, this pended action was not enacted following the Claimant's failure to appear at the scheduled hearing time.

On October 1, 2015, the Claimant's FAP benefits were closed due to the December 30, 2013, hearing dismissal not being disposed of properly. The Department received two requests for hearings. These hearings requests were combined into a single hearing because they both dealt with the Claimant's protest of his FAP benefits as of October 1, 2015, and ongoing.

The Department provided a copy of the Claimant's FAP eligibility summary from August 1, 2014, through December 1, 2015. This document indicates that the Claimant received a \$ [REDACTED] monthly allotment of FAP benefits from August 1, 2014, through September 30, 2015. From August 1, 2014, through September 30, 2014, and February 1, 2015, through September 30, 2014, Department records indicate that certification of the Claimant's FAP eligibility was overridden.

The Department argues that as of October 1, 2015, the Claimant is only eligible for a \$ [REDACTED] monthly allotment of FAP benefit because he is not eligible for the heat and utility deduction, and has not been eligible for this deduction before October 1, 2015.

The Claimant's representative argues that the Claimant has always been eligible for the heat and utility deduction, and continues to be eligible for this deduction.

Based on the evidence and testimony available during the hearing, this Administrative Law Judge finds that the evidence does not support a finding of any reported case change or eligibility redeterminations certified since he failed to attend his December 30, 2013, hearing, and before the closure of his FAP benefits effective October 1, 2015.

When the Department discovered that the December 30, 2013, hearing dismissal had not been implemented, it conducted an eligibility redetermination on October 23, 2015, to determine the Claimant's eligibility for continuing FAP benefits. Based on that interview, the Department determined that the Claimant was not eligible for the standard heat and utility deduction, which reduced his eligible to a \$ [REDACTED] monthly allotment of FAP benefits.

This Administrative Law Judge finds that the Claimant was eligible for FAP benefits before October 1, 2015, that he was receiving the standard heat and utility deduction, and that he was entitled to a five month grace period following his first redetermination after the policy was changed effective May 1, 2014. Therefore, the Claimant was entitled to receive the standard heat and utility deduction on his FAP budget from October 1, 2015, through February 1, 2015, regardless of his actual expenses.

In the alternative, if October 23, 2015, was not the first redetermination of eligibility or reported change of the Claimant's circumstances, this Administrative Law Judge finds that the Department improperly removed this expense from his benefits case.

On November 12, 2013, the Department the Claimant a Redetermination (DHS-1010) where he reported that he has an obligation to pay \$■■■ each month for heating expenses. It was not necessary for the Department to verify this expense at that time because all FAP recipients had been enrolled in the Low Income Home Energy Assistance Act (LIHEAP) and were allowed to take the heat and utility deduction regardless of whether they actually incurred these expenses. On May 1, 2015, the Department put new policy in place that required all FAP recipients to provide verification that they incur heating or cooling expenses separate from their housing costs, or that they receive a home heating credit of at least \$■■■. Upon discovery that the Claimant's previous request for a hearing that was dismissed on December 30, 2013, was not properly entered into the Department's computer system, the Department made the determination that the Claimant was no longer entitled to the heat and utility deduction because no verification of a separate expenses for heating costs had been submitted.

The Department is required to obtain verification when Information regarding an eligibility factor is unclear, inconsistent, incomplete or contradictory. Department of Health and Human Services Bridges Administrative Manual (BAM) 220 (July 1, 2015), p 1.

Because the Department could have closed in 2013 except for the Department's failure to process a hearing dismissal, and that the policy concerning allowable expenses with respect to FAP budgeting changed after this hearing dismissal, this Administrative Law Judge finds that as of October 1, 2015, the Claimant's countable shelter expenses were unclear, inconsistent, and incomplete. Therefore the Department had an obligation to seek verification of these expenses and the evidence on the record does not support a finding that this happened. Therefore, the Department the Department was not acting in accordance with BAM 220 when the heat and utility deduction was removed from the Claimant's FAP budget without first seeking verification of his shelter expenses.

In the alternative, if the Department was not required to seek additional verification of the Claimant's shelter expenses, this Administrative Law Judge finds that the Claimant is entitled to the heat and utility deduction in accordance with BEM 554.

Department records indicate that the Claimant lives with his aunt, but that they do not purchase and prepare food together. An adult FAP recipient and an aunt are not

mandatory group members; therefore they are eligible to have separate FAP benefit groups. The Claimant and his aunt testified that the Claimant pays rent to live in the aunt's home, and pays an additional \$50 separate from rent to cover heating expenses.

The Department's representative testified that records in the Claimant's benefit case indicate that the utility bills at the aunt's home are in the aunt's name only, and that the Claimant does not have an obligation for heating or cooling expenses separate from his housing expenses. The Department's representative argued that the Claimant is therefore not entitled to the heat and utility deduction.

The Department will not prorate the heat and utility standard even if the heating/cooling expense is shared. BEM 554, p 14.

No evidence was provided on the record that the Claimant's obligation to contribute to heating and cooling expenses at his aunt's home is not separate from his rent payments to his aunt. This Administrative Law Judge finds that heating expenses at the aunt's home are a shared expense, which entitles the Claimant to the entire heat and utility deduction and this deduction is always granted in full regardless of the FAP recipient's actual expenses assuming the other requirements of BEM 554 have been met.

The Claimant's representative argued that the Department is required to grant the Claimant the heat and utility deduction under the authority of relevant federal regulations in 7 CFR 273.9. This Administrative Law Judge finds that BEM 554 is not inconsistent with 7 CFR 273.9, and therefore it not necessary to apply the federal regulation towards these circumstances.

In the alternative, if the Claimant is found to not be eligible for the heat and utility standard, this Administrative Law Judge finds that the Department failed to establish that it properly determined the Claimant's countable income as of October 1, 2015. The Department presented evidence that it determined that the Claimant received unearned income in the gross monthly amount of \$[REDACTED] but failed to provide evidence supporting how this amount was determined. During the hearing, the Claimant's representative argued that the Department is using an incorrect income amount. The Department has the burden of producing evidence on an issue in order to establish that its actions were a proper application of Department policy. In this case, the Claimant requested a hearing protesting the amount of his current FAP benefits, and the Department failed to offer sufficient evidence supporting its determination of his current level of FAP benefits. Therefore, this Administrative Law Judge has no choice but to reverse the Department's determination of eligibility.

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 Claimant's eligibility for the Food Assistance Program (FAP) as of October 1, 2015.

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. Allow the Claimant a ten-day period to provide verification to clarify all of his shelter expenses as of October 1, 2015.
2. Initiate a determination of the Claimant's eligibility for the Food Assistance Program (FAP) as of October 1, 2015.
3. Provide the Claimant with a Notice of Case Action (DHS-1605) describing the Department's revised eligibility determination.
4. Issue the Claimant any retroactive benefits he may be eligible to receive, if any.



Kevin Scully
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Mailed: **1/11/2016**

KS/nr

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:

