

**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.: 15-023841
Issue No.: 3008
Agency Case No.: [REDACTED]
Hearing Date: February 8, 2016
County: WAYNE-DISTRICT
15 (GREYDALE)

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 February 8, 2016, from Detroit, Michigan. The Petitioner was represented by the Petitioner, [REDACTED]. The Department of Health and Human Services (Department) was represented by [REDACTED], Assistance Payments Supervisor.

ISSUE

Did the Department properly reduce the 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. The Petitioner provided income information, pay stubs, in connection with an application for Direct Support Services.
2. The Department, based upon the pay information provided, reduced the Petitioner's FAP benefits effective January 1, 2015, to \$ [REDACTED]
3. Two pay stubs were provided to the Department; October 30, 2015, gross amount \$ [REDACTED] and November 13, 2015, \$ [REDACTED]. Both checks contained overtime pay. The Petitioner is paid bi-weekly. Exhibit 1.

4. The Petitioner testified that she pays rent of \$ [REDACTED] and also pays for heating. The Department did not include a heating allowance or rent when calculating the FAP benefits.
5. The Petitioner received ongoing overtime from October 2015 through January 2016.
6. The Petitioner requested a hearing on December 4, 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.

In this case, the Department reduced the Petitioner's FAP benefits after it determined that her income had increased based upon the last 30 days of pay stubs provided to the Department. The Department recalculated the Petitioner's FAP benefits upon receiving the updated income. It was clear from the pay stubs presented and the Petitioner's testimony, that she had been receiving overtime and increased hours since August 2015 continuing through early January 2016. Under these circumstances, the Department correctly based the FAP benefits on the increased income as it was not a one-time overtime event an out-of-the-ordinary large check during the period in question. BEM 505 requires the Department to determine standard monthly income and further provides:

Use past income to prospect income for the future unless changes are expected:

- Use income from the **past 30 days** if it appears to accurately reflect what is expected to be received in the benefit month.

Note: The 30-day period used can begin up to 30 days before the interview date or the date the information was requested.

Note: Determine the amount to budget per pay period. BEM 505, (July 1, 2015), p. 2

Prospect income using a best estimate of income expected to be received during the month (or already received). Seek input from the client to establish an estimate, whenever possible.

To prospect income, you will need to know:

- The type of income and the frequency it is received (such as, weekly).
- The day(s) of the week paid.
- The date(s) paid.
- The gross income amount received or expected to be received on each pay date. BEM 505, p. 2-3.

Note: If payments in the new amount have been received and they are accurate reflections of the future income, use them in the budget for future months. BEM, 505, p. 6

Based upon a review of the pay stubs, the Petitioner's testimony that increased income and overtime, which continued for several months until after the holidays in early January 2016, it was reasonable for the Department to use the two pay stubs that were provided as they accurately reflected the Petitioners income at the time for several months.

It should also be understood that the fact that the Petitioner's income is now reduced, entitles her to have her FAP benefits reviewed once she provides pay stubs verifying same. Further, FAP recipients are required to report changes in income within 10 days of the change. BEM 505.

The Department could not determine whether the update of FAP benefits, which it testified excluded housing expenses for rent and heat allowance, was due to the case worker not including housing expenses. Even though the Department could not say whether the shelter expenses were reported to the Department or were continuing, a review of the FAP budget clearly indicates that housing expenses were considered and included in the January 2016 FAP benefit calculation and an excess shelter deduction was applied. It is also noted that at the hearing the undersigned understood the facts differently based upon the Department's testimony that shelter expenses were not included in the FAP budget in question.

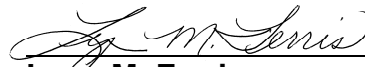
After a further review of the FAP budget after the hearing, it is clear the Department was mistaken when it advised that a heat allowance and rent expense were not included in the FAP budget. An excess shelter expense of \$ [REDACTED] was included in the calculation of the \$ [REDACTED] FAP budget for January 2016.

To determine the excess shelter expense, the shelter expenses are added together and in this case would be \$ [REDACTED] in rent and a heat allowance of \$ [REDACTED] for a total housing expense of \$ [REDACTED]. To determine the excess shelter deduction, one half of the Adjusted Gross Income of \$ [REDACTED] is subtracted from the total shelter expenses. The determination of the excess shelter deduction was correct. ($\$ [REDACTED] \div 2 = \$ [REDACTED]$) ($\$ [REDACTED] - \$ [REDACTED] = \$ [REDACTED]$). Based upon this information, the Department's determination of FAP benefits of \$ [REDACTED] for January 2016 is correct. BEM 554, (October 1, 2015), p. 14-15; BEM 556, (July 2013), p. 5-4.

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 reduced the Petitioner's FAP benefits.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.



Lynn M. Ferris

Administrative Law Judge

for Nick Lyon, Director

Department of Health and Human Services

Date Mailed: **February 9, 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:

