

**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.: 15-017865
Issue No.: 3001; 3008
Agency Case No.: [REDACTED]
Hearing Date: January 4, 2016
County: WAYNE-DISTRICT 18

ADMINISTRATIVE LAW JUDGE: Eric Feldman

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 three-way telephone hearing was held on January 4, 2016, from Detroit, Michigan. The Petitioner was represented by [REDACTED] (Petitioner); and Petitioner's son/Authorized Hearing Representative (AHR), [REDACTED]. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearings Facilitator.

ISSUES

Did the Department properly reduce Petitioner's Food Assistance Program (FAP) group composition from three to one effective [REDACTED]?

Did the Department properly calculate Petitioner's FAP allotment effective [REDACTED] [REDACTED]?

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 is an ongoing recipient of FAP benefits.
2. Prior to the benefit period beginning [REDACTED], Petitioner's FAP group composition was three (Petitioner, her first son, and her second son).
3. On [REDACTED], Petitioner submitted a semi-annual contact report (contact report), which she reported the following: (i) her group composition is two (Petitioner and her first son (hereinafter referred to as "her son")); and (ii) indicated

that her second son moved out of the home on [REDACTED]. See Exhibit A, pp. 6-7.

4. On [REDACTED], the Department sent Petitioner a Notice of Case Action (case action) notifying her that she was approved for FAP benefits in the amount of \$166 for a group size of one from [REDACTED] to [REDACTED]. See Exhibit A, pp. 3-5. The case action also indicated that Petitioner was approved for FAP benefits in the amount of \$130 for a group size of one from [REDACTED] to [REDACTED]. See Exhibit A, pp. 3-5.
5. The case action indicated that her second son was no longer a group member of the home. See Exhibit A, pp. 3-5. The case action also indicated that her son was not an eligible student, thus, was not part of the FAP group composition. See Exhibit A, pp. 3-5. Based on the above information, the Department reduced Petitioner's FAP group composition from three to one effective [REDACTED].
6. On [REDACTED], Petitioner filed a hearing request, protesting the Department's action. See Exhibit A, p. 2.
7. On [REDACTED], the Michigan Administrative Hearing System (MAHS) sent Petitioner a Notice of Hearing scheduling her for a hearing on [REDACTED].
8. On or around [REDACTED], Petitioner requested an adjournment and that her son becomes her Authorized Hearing Representative (AHR).
9. On [REDACTED], the Administrative Law Judge approved Petitioner's adjournment request and issued an Adjournment Order.
10. On [REDACTED], MAHS sent Petitioner a Notice of Hearing rescheduling her for a hearing on [REDACTED].
11. On an unspecified date, MAHS approved Petitioner's request that the hearing be conducted via a three-way telephone hearing.

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.

Preliminary matters

First, Petitioner indicated that she never received the DHS-3050, Hearing Summary and the Hearing Packet that will be used by the Department as evidence at the administrative hearing. As part of the evidence record, the Department presented a DHS-1520, Proof of Service that showed that the Department sent the above documentation to Petitioner/AHR. As such, the hearing proceeded as the Department provided evidence that it sent Petitioner and/or the AHR the Hearing Summary and Hearing Packet. See BAM 600 (April 2015 and October 2015), pp. 20-23. Moreover, Petitioner did not object to the Department's Exhibit A being admitted into the evidence record. See Exhibit A, pp. 1-13.

It should be noted that the Department sent MAHS additional information related to this case. However, there was no evidence provided that this additional information was sent to Petitioner/AHR (i.e., Proof of Service). As such, this additional documentation was not admitted into the evidence record.

Second, Petitioner raised a concern during the hearing that she did not receive proper notice that her benefits/group composition decreased.

Upon certification of eligibility results, the Department automatically notifies the client in writing of positive and negative actions by generating the appropriate notice of case action. BAM 220 (July 2015), p. 2. A positive action is a Michigan Department of Health & Human Services (MDHHS) action to approve an application or increase a benefit. BAM 220, p. 1. A negative action is a MDHHS action to deny an application or to reduce, suspend or terminate a benefit. BAM 220, p. 1. There are two types of written notice: adequate and timely. BAM 220, p. 2. An adequate notice is a written notice sent to the client at the same time an action takes effect (not pended). BAM 220, p. 2. Timely notice is given for a negative action unless policy specifies adequate notice or no notice. BAM 220, p. 4. A timely notice is mailed at least 11 days before the intended negative action takes effect. BAM 220, p. 4. The action is pended to provide the client a chance to react to the proposed action. BAM 220, p. 4. However, for FAP only, only adequate notice is necessary for changes reported on a DHS-1046, Semi-Annual Contact Report (contact report). See BAM 220, p. 4.

In the present case, Petitioner submitted a contact report on [REDACTED], and testified that she and/or her son provided the school schedule approximately two weeks after, even though the school schedule for winter semester 2015 indicated received on [REDACTED]. See Exhibit A, pp. 6-8. Nonetheless, the case action dated [REDACTED], was generated based on the changes reported on her contact report. As stated above in policy, only adequate notice is necessary when it involves changes reported on a contact report for FAP only cases. See BAM 220, pp. 3-4. As such, the Department

was not obligated to issue Petitioner timely notice that her benefits would decrease in this scenario and adequate notice of the decrease was sufficient.

Third, Petitioner's letter dated on or around [REDACTED], indicated that she was not given the opportunity to provide necessary documentation (i.e., verifications), and she was not given the opportunity to request that she continue receiving the FAP benefits. See Exhibit 1, pp. 1-7. Nonetheless, both parties were present for the hearing in which they were afforded the opportunity to present their evidence in support of their arguments. The undersigned addresses the issues below.

Fourth, at the end of the hearing, Petitioner indicated that she had an additional witness whom she wanted to participate via telephone. Petitioner testified that the additional witness was her son's half-sister who also provided the Petitioner with care and/or witnessed the son provide care to the Petitioner. However, such testimony would be unduly repetitious, because Petitioner's son who was present for the hearing already provided testimony that he provides care for his mother. See BAM 600, p. 37. Moreover, Petitioner presented several documents supporting her argument that her son provides her with care. See Exhibit 1. The undersigned does not doubt that Petitioner receives care from her son and/or that she also received care from his half-sister. As such, the undersigned did not allow the additional witness to testify on behalf of the Petitioner.

Additionally, Petitioner failed to inform the undersigned at the beginning of the hearing that she had a witness. Policy states that both the local office and the client or AHR had adequate opportunity to present the case, bring witnesses, establish all pertinent facts, argue the case, refute any evidence, cross-examine adverse witnesses, and cross-examine the author of a document offered in evidence. See BAM 600, p. 36. As such, the undersigned concluded with the hearing as both sides had an opportunity to present their case.

FAP group composition

In the present case, Petitioner did not dispute that her second son moved out of the home on [REDACTED]. See Exhibit A, pp. 6-7. Petitioner argued, though, that her FAP group composition should be two (Petitioner and her son) effective [REDACTED].

In response, the Department argued that her son was not an eligible student; therefore, he could not be a member of Petitioner's FAP group composition.

For FAP cases, a person enrolled in a post-secondary education program may be in student status. BEM 245 (July 2014), p. 1. A person in student status must meet certain criteria in order to be eligible for assistance. BEM 245, p. 1.

For FAP cases, a person is in student status if he is:

- Age 18 through 49 and
- Enrolled half-time or more in a:
 - Vocational, trade, business, or technical school that normally requires a high school diploma or an equivalency certificate.
 - Regular curriculum at a college or university that offers degree programs regardless of whether a diploma is required.

BEM 245, p. 3.

It was not disputed that Petitioner's son met the above requirements. Additionally, though, in order for a person in student status to be eligible, they must meet one of the following criteria:

- Receiving FIP.
- Enrolled in an institution of higher education as a result of participation in:
 - A JTPA program.
 - A program under section 236 of the Trade Readjustment Act of 1974 (U. S. C. 2296).
 - Another State or local government employment and training program.
- Physically or mentally unfit for employment.
- Employed for at least 20 hours per week and paid for such employment.
- Self-employed for at least 20 hours per week and earning weekly income at least equivalent to the federal minimum wage multiplied by 20 hours.
- Participating in an on-the-job training program. A person is considered to be participating in an on-the-job training program only during the period of time the person is being trained by the employer.
- Participating in a state or federally-funded work study program (funded in full or in part under Title IV-C of the Higher Education Act of 1965, as amended) during the regular school year.

To qualify under this provision the student must be approved for work study during the school term and anticipate actually working during that time. The exemption:

 - Starts the month the school term begins or the month work study is approved, whichever is later.
 - Continues until the end of the month in which the school term ends, or when the local office becomes aware that the student has refused a work-study assignment.
 - Remains between terms or semesters when the break is less than a full month, or the student is still participating in work study during the break.
- Providing more than half of the physical care of a group member under the age of six.

- Providing more than half of the physical care of a group member age six through eleven and the local office has determined adequate child care is not available to:
 - Enable the person to attend class and work at least 20 hours per week.
 - Participate in a state or federally-financed work study program during the regular school year.
- A single parent enrolled full-time in an institution of higher education who cares for a dependent under age 12. This includes a person who does not live with his or her spouse, who has parental control over a child who does **not** live with his or her natural, adoptive or stepparent.

BEM 245, pp. 3-5. For the care of a child under age six, consider the student to be providing physical care as long as he or she claims primary responsibility for such care, even though another adult may be in the FAP group. BEM 245, p. 5.

When determining the availability of adequate child care for a child six through 11, another person in the home, over 18, need not be a FAP group member to provide care. BEM 245, p. 5.

The person remains in student status while attending classes regularly. BEM 245, p. 5. Student status continues during official school vacations and periods of extended illness. BEM 245, p. 5. Student status does not continue if the student is suspended or does not intend to register for the next school term (excluding summer term). BEM 245, p. 5.

During the hearing, the undersigned asked Petitioner's son whether he met any of the additional criteria listed above in order for him to be student status eligible. Moreover, Petitioner's son testified that he is a tutor at school, but it is not 20 hours a week and he gets paid in the form of scholarship for such services. However, a review of BEM 245 finds that Petitioner's son did not meet any of the above criteria. As such, the evidence established that her son failed to meet student status eligibility in order for him to be eligible for FAP assistance. See BEM 245, pp. 1-11.

Petitioner argued, though, BEM 230B, Employment-Related Activities: FAP policy. See BEM 230B (October 2013), pp. 1-6.

The Michigan Department of Health and Human Services (DHS) has a unique opportunity to assist families in becoming strong, viable, participative members of the community. BEM 230B, p. 1. By involving the adult members of the household in employment-related activities, we help restore self-confidence and a sense of self-worth. BEM 230B, p. 1. These are cornerstones to building strong, self-reliant families. BEM 230B, p. 1.

The goal of the Food Assistance Program (FAP) is to ensure sound nutrition among children and adults. BEM 230B, p. 1. In addition, the goal of our employment-related policies for FAP households is to assist applicants and recipients toward self-sufficiency by providing them with opportunities to pursue employment and/or education and training. BEM 230B, p. 1.

Policy further stated that clients meeting one of the criteria listed in BEM 230B are temporarily deferred from employment-related activities. BEM 230B, pp. 4-6. Specifically, policy states to defer one person who personally provides care for a disabled member of his/her own FAP group. BEM 230B, p. 4. To verify, use a statement from an M.D./D.O./P.A that the client's presence is needed to assist the household member with minimum daily activities of living. BEM 230B, p. 4. Also, a person enrolled in a post-secondary education program may be in student status and be deferred from employment-related activities. See BEM 230B, p. 5.

Based on the above policy, Petitioner argued that her son personally provides care for her as she is a disabled member of her own FAP group. As such, Petitioner indicated that her son should be deferred from employment-related activities as he meets this deferral requirement. See BEM 230B, p. 4. Petitioner also provided several verifications and her letter indicating/verifying her disabilities. See Exhibit 1, pp. 1-24. Petitioner's son also argued that by meeting this criteria, he was also deferred from student status eligibility. However, Petitioner and her son's arguments are flawed. Petitioner is arguing a separate policy that is related to employment-related activities. See BEM 230B, pp. 1-6. BEM 245, School Attendance and Student Status, is a separate eligibility factor that her son, in this case, has to meet in order to be eligible for FAP assistance. BEM 230B is separate policy that is unrelated to the student status eligibility. As stated above, Petitioner's son failed to meet any of the additional criteria listed in BEM 245 in order for him to be student status eligible. See BEM 245, pp. 1-11. Therefore, the Department properly determined that Petitioner's FAP group composition is one effective [REDACTED], in accordance with Department policy. See BEM 245, pp. 1-11.

It should be noted that Petitioner's hearing request also requested the her FAP benefits be reinstated retroactively due to the fact that the Department must give the individual an opportunity to claim good cause before it makes a decision to disqualify an individual. See Exhibit A, p. 2. However, this again applies to BEM 230B and BEM 233B policy for good cause requirements. See BEM 230B, p. 2 and BEM 233B (July 2013), pp. 7-12. There is no good cause requirement for student status eligibility; thus, a good cause determination is not applicable in this case.

FAP calculation

Petitioner also disputed the calculation of her FAP allotment effective [REDACTED]. As determined above, Petitioner's certified group size is one and that Petitioner is a

senior/disabled/disabled veteran (SDV) member(s). The Department presented the August and September 2015 FAP budgets for review. See Exhibit A, pp. 9-12.

First, the Department calculated Petitioner's gross unearned income from the Social Security Administration to be \$1,281, which she did not dispute. See Exhibit A, pp. 9-12 and BEM 503 (July 2015), pp. 28-33.

Second, the Department properly applied the \$154 standard deduction applicable to Petitioner's group size of one. RFT 255 (October 2014), p. 1.

Third, the Department calculated Petitioner's medical deduction to be \$264 for August 2015 and \$184 for September 2015. See Exhibit A, pp. 9 and 11. For groups with one or more SDV members, the Department allows medical expenses that exceed \$35. See BEM 554 (October 2014), p. 1.

The Department estimates an SDV person's medical expenses for the benefit period. BEM 554, p. 11. The expense does not have to be paid to be allowed. BEM 554, p. 11. The Department allows medical expenses when verification of the portion paid, or to be paid by insurance, Medicare, Medicaid, etc. is provided. BEM 554, p. 11. The Department allows only the non-reimbursable portion of a medical expense. BEM 554, p. 11. The medical bill cannot be overdue. BEM 554, p. 11.

The Department verifies allowable medical expenses including the amount of reimbursement, at initial application and redetermination. BEM 554, p. 11. The Department verifies reported changes in the source or amount of medical expenses if the change would result in an increase in benefits. BEM 554, p. 11. The Department does not verify other factors, unless questionable. BEM 554, p. 11. Other factors include things like the allowability of the service or the eligibility of the person incurring the cost. BEM 554, p. 11.

In this case, neither party could provide evidence and/or testimony as to whether the medical deductions calculated for August and/or September 2015 were proper. Because the burden is on the Department to show that it properly calculated the FAP budget, the Department in this case failed to satisfy its burden of showing that it properly calculated the medical expense deduction effective [REDACTED]. See BEM 554, pp. 1 and 11. As such, the Department will recalculate Petitioner's FAP allotment effective [REDACTED].

Fourth, the Budget Summary from the case action notice dated [REDACTED], states that Petitioner's monthly housing costs is \$650. See Exhibit A, pp. 4-5. However, Petitioner disputed this amount and testified that it is \$614. As such, the Department will also recalculate Petitioner's monthly housing expenses. See BEM 554, pp. 12-14.

Fifth, the Department also provided Petitioner with the \$553 mandatory heat and utility (h/u) standard, which encompasses all utilities (water, gas, electric, telephone) and is

unchanged even if a client's monthly utility expenses exceed the \$553 amount. See Exhibit A, p. 4; BEM 554, pp. 14-15; and RFT 255, p. 1. Please note, the mandatory h/u standard decreased to \$539 effective October 1, 2015. RFT 255 (October 2015), p. 1. Nevertheless, for the above stated reasons, the Department will recalculate Petitioner's FAP allotment effective [REDACTED].

DECISION AND ORDER

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 (i) the Department acted in accordance with Department policy when it properly determined that Petitioner's FAP group composition is one effective August 1, 2015; and (ii) did not act in accordance with Department policy when it improperly calculated Petitioner's FAP allotment effective [REDACTED].

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to FAP group composition and **REVERSED IN PART** with respect to FAP calculation.

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. Recalculate the FAP budget for [REDACTED], ongoing;
2. Issue supplements to Petitioner for any FAP benefits she was eligible to receive but did not from [REDACTED]; and
3. Notify Petitioner of its decision.



Eric Feldman
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **1/7/2016**

Date Mailed: **1/7/2016**

EF / 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:

