

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

IN THE MATTER OF:



MAHS Reg. No.: 15-020156
Issue No.: 3008
Agency Case No.: [REDACTED]
Hearing Date: January 05, 2016
County: LEELANAU

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 05, 2016, from Lansing, Michigan. Participants on behalf of Claimant included his authorized hearings representative [REDACTED] [REDACTED] [REDACTED] [REDACTED] (Assistance Payments Supervisor) represented the Department of Health and Human Services (Department). Witnesses on behalf of the Department included [REDACTED] [REDACTED] (Program Manager) and [REDACTED] [REDACTED] (Assistance Payments Worker).

ISSUE

Did the Department of Health and Human Services (Department) properly determine the Claimant's eligibility for Food Assistance Program (FAP) benefits from June 1, 2015, through October 31, 2015?

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. The Claimant does not have a monthly obligation for heating or cooling expenses separate from her monthly rent payment.
3. On May 7, 2015, the Department notified the Claimant that her monthly allotment of Food Assistance Program (FAP) benefits would be reduced to \$ [REDACTED] effective June 1, 2015.
4. On September 26, 2015, the Claimant applied to the Michigan Department of Treasury for a home heating credit.
5. On October 15, 2015, the Claimant received a \$ [REDACTED] home heating credit.

6. On October 22, 2015, the Department received the Claimant's request for a hearing protesting the amount of Food Assistance Program (FAP) benefits she was granted by the Department from June 1, 2015, through October 31, 2015.

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, 2014), p 15.

The Claimant is an ongoing FAP recipient as a group of one. On May 7, 2015, the Department redetermined the Claimant's eligibility for ongoing FAP benefits and determined that his monthly allotment would be reduced to \$█ effective June 1, 2015, because she no longer met the requirements to receive the standard heat and utility deduction.

The Claimant does not have a separate obligation to pay for heating or cooling expenses separate from her monthly rent expense. No evidence was presented on the record that the Claimant received the Michigan home heating credit before October 15, 2015.

On September 25, 2015, the Claimant applied to the Michigan Department of Treasury for the home heating credit. Her application was approved and she received the home heating credit on October 15, 2015. The Department applied this information to the Claimant's eligibility for FAP benefits as of November 1, 2015, and she once again meets the requirement for the standard heat and utility deduction.

The Claimant's representative argues that the Department should have informed the Claimant that she would need to apply for the home heating credit in order to remain eligible for the heat and utility deduction.

The Claimant's grievance centers on dissatisfaction with the Department's current policy. The Claimant's request is not within the scope of authority delegated to this Administrative Law Judge. Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations, or make exceptions to the department policy set out in the program manuals. Furthermore, administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. Michigan Mutual Liability Co. v Baker, 295 Mich 237; 294 NW 168 (1940).

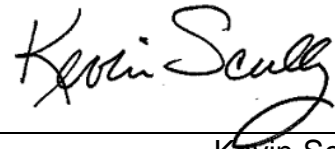
The home heating credit program is not administered by the Department of Health and Human Services (Department) and the Department had no way of knowing that the Claimant was eligible for this credit. Before the Department's policy (BEM 554) was updated on May 1, 2014, all FAP recipients received the heat and utility deduction under the Low Income Home Energy Assistance Program (LIHEAP). Under the revised policy, the Claimant is required to have heating or cooling expenses separate from housing expenses, or receive a home heating credit from the Department of Treasury greater than \$ [REDACTED] BEM 554.

In this case, it is undisputed that the Claimant did not have a heating or cooling expense separate from her rent payments as of June 1, 2015. The evidence supports a finding that she did not receive the home heating credit until October 15, 2015. Therefore, the Claimant did not meet the requirements to receive the heat and utility deduction until November 1, 2015.

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 determined the Claimant's eligibility for Food Assistance Program (FAP) benefits from June 1, 2015, through October 31, 2015.

DECISION AND ORDER

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



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

Date Mailed: **1/8/2016**

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:

