

**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.: 15-020719
Issue No.: 3001
Agency Case No.: [REDACTED]
Hearing Date: January 4, 2016
County: Wayne (17)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 January 4, 2016, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], hearing facilitator. [REDACTED] of MDHHS appeared as an Arabic translator for Petitioner.

ISSUE

The issue is whether MDHHS properly determined Petitioner's Food Assistance Program (FAP) eligibility.

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 FAP benefit recipient.
2. Petitioner had monthly income of [REDACTED]
3. Petitioner was responsible for electric usage, including air conditioning, for his residence.
4. On October 27, 2015, MDHHS determined Petitioner was eligible to receive [REDACTED] in FAP benefits, in part, based on income of \$ [REDACTED]/month and no obligation for paying heat.

5. On November 3, 2015, Petitioner requested a hearing to dispute his FAP eligibility for December 2015.

CONCLUSIONS OF LAW

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. MDHHS (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. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing to dispute a determination of [REDACTED] in FAP benefit eligibility for December 2015. Petitioner testified he requested a hearing because the FAP amount was “not enough.”

MDHHS presented FAP- EDG Net Income Results (Exhibit 1; p. 1) which listed most FAP benefit budget factors for December 2015. During the hearing, all FAP benefit factors were discussed with Petitioner. Petitioner only disputed the earned income and utilities budgeted by MDHHS.

It was not disputed that Petitioner received biweekly earnings. MDHHS presented a Worknumber verification (Exhibit 1; pp. 2-4), which listed Petitioner received gross earnings of [REDACTED] on October 8, 2015, and [REDACTED] on October 22, 2015. Petitioner contended that MDHHS should have added his biweekly pays to calculate his monthly income.

[MDHHS is] to convert stable and fluctuating income that is received more often than monthly to a standard monthly amount. BEM 505 (July 2014), p. 7. [MDHHS is to] multiply amounts received every two weeks by 2.15. *Id.*, p. 8.

Multiplying Petitioner’s averaging biweekly gross earnings by 2.15 results in an income of [REDACTED], the same amount factored by MDHHS. It is found that MDHHS properly budgeted Petitioner’s earned income.

MDHHS credited Petitioner with various utility obligations. Petitioner testimony indicated he was responsible for payments of electricity, water, and telephone. Petitioner also testified that he had an electric air conditioner.

The heat/utility (h/u) standard covers all heat and utility costs including cooling. BEM 554 (October 2014), p. 14. FAP groups that qualify for the h/u standard do not receive any other individual utility standards. *Id.*, p. 15. FAP groups whose electricity is included

in their rent or fees are not eligible for the h/u standard unless their landlord bills them separately for excess cooling. *Id.*, p. 17. FAP groups who pay for cooling (including room air conditioners) are eligible for the h/u standard if they verify they have the responsibility to pay for non-heat electric. *Id.*, p. 16.

Petitioner's testimony credibly indicated he has an electric air conditioner. It was not disputed that Petitioner had an obligation for non-heat electricity. Presented evidence sufficiently verified MDHHS should have credited Petitioner with the full h/u credit in determining Petitioner's FAP eligibility. It is found that Petitioner is entitled to the h/u standard based on the obligation for cooling his residence.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly determined Petitioner's FAP eligibility. It is ordered that MDHHS perform the following actions within 10 days of the date of mailing of this decision:

- (1) redetermine Petitioner's FAP eligibility, effective December 2015, subject to the finding that Petitioner is entitled to the full h/u standard based on his obligation to pay for the cooling of his residence; and
- (2) supplement Petitioner for any benefits improperly not issued.

The actions taken by MDHHS are **REVERSED**.



Christian Gardocki

Administrative Law Judge
for Nick Lyon, Director

Department of Health and Human Services

Date Signed: **1/5/2016**

Date Mailed: **1/5/2016**

CG/tm

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:

