

**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.: 15-021261
Issue No.: 3008
Agency Case No.: [REDACTED]
Hearing Date: January 07, 2016
County: Wayne (41) Fort Wayne

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 January 7, 2015, from Detroit, Michigan. The Petitioner was represented by Petitioner [REDACTED]. A witness, [REDACTED] of [REDACTED], also appeared on behalf of the Petitioner. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearing Liaison.

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 was an ongoing recipient of FAP. The Petitioner currently receives \$ [REDACTED] monthly in FAP benefits.
2. The Petitioner has a heating expense obligation and has electric heat. The Petitioner also received a Home Heating Credit. See Hearing Summary.
3. The Department did not provide the Petitioner with a \$ [REDACTED] heating allowance but gave her a non-heat electric expense of \$ [REDACTED] Exhibit 3.
4. The Petitioner reported a rent change on May 8, 2015, due to a rent increase to \$ [REDACTED] Exhibit 2.

5. The Department issued a Notice of Case Action on September 12, 2015, advising the Petitioner that her FAP would be reduced to \$ [REDACTED] per month effective October 1, 2015, ongoing. The Petitioner previously received \$ [REDACTED] in FAP benefits. Exhibit 3.
6. The Petitioner currently receives Supplemental Security Income (SSI) in the amount of \$ [REDACTED] and a quarterly supplement of \$ [REDACTED] for a total of \$ [REDACTED] Exhibit 3.
7. The Petitioner's rent obligation is \$ [REDACTED] per month, and the rent receipt does not indicate that heating and utilities are included in the rent. Exhibit 2.
8. The Petitioner requested a timely hearing on October 30, 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 Petitioner testified credibly during the hearing that she has a heating expense due to heating her home with electric heat. The Department reduced the Petitioner's FAP benefits to \$ [REDACTED] and issued a Notice of Case Action dated September 12, 2015, making the reduction effective October 1, 2015. The Petitioner is now challenging the Department calculation and reduction of her FAP benefits.

In the FAP budget provided at the hearing, the Department gave a \$ [REDACTED] non-heat electric standard instead of a heat and utility allowance of \$ [REDACTED]. The allowance changed effective October 1, 2015, and was reduced from \$ [REDACTED] (the prior heat allowance) to \$ [REDACTED] RET 255 (October 1, 2015) p. 1.

The provisions governing whether an individual is entitled to a heat allowance are found in BEM 554 it provides:

The heat/utility (h/u) standard covers all heat and utility costs including cooling, **except** actual utility expenses, for

example, installation fees etc.; see Actual Utilities in this item. Do **not** prorate the h/u standard even if the heating/cooling expense is shared.

FAP groups that qualify for the h/u standard **do not** receive any other individual utility standards. Do **not** require verification of the other utility standards if the household is already eligible for the h/u standard. BEM 554 (October 1, 2015) p. 14-15.

A change to the Heat and utility Standard was made effective May 1, 2015; when a change was reported clients were no longer automatically allowed the \$553 Heat and Utility Standard.

In this case, the Petitioner challenges the Department's FAP allotment reduction as incorrect and that she should receive the Heat and Utility Credit as of October 1, 2015, of \$ [REDACTED]. The Petitioner supplied a new electric bill as evidence at the hearing. The new bill covered November 2015, and the bill increased approximately 50 percent from the previous month, when compared to a prior bill for October 2015 for \$ [REDACTED]. Exhibit 4 and Petitioner's Exhibit A. In addition, the Petitioner credibly testified that she has a heating expense. Lastly, the rent receipt previously provided to the Department was for rent only. Exhibit 3. Department policy does not preclude heating expenses for electric heat.

When an FAP group which has a heating expense or contributes to the heating expense separate from rent, they must use the h/u standard. BEM 554 p. 16. What this means is that a recipient is either eligible for the h/u expense of \$ [REDACTED] **or if** a recipient has no heating expense, the individual utility allowances for electricity, water and phone apply. Therefore, it is determined, based upon the facts presented at the hearing, that the Department did not properly calculate the FAP benefits, which were reduced as of October 1, 2015; and the FAP budget must be recalculated to include the h/u allowance of \$ [REDACTED].

The Department also was aware of a Home Heating Credit on February 21, 2015, as stated in its hearing summary; however, the Department did not provide any evidence that it checked the Home Heating Credit to determine if the Petitioner met the requirements of BEM 554 to allow the Home Heating Credit to be used to continue the h/u heat allowance when calculating the current benefits.

BEM 554 provides:

FAP groups who are at redetermination or have their first case change and have received a HHC in an amount greater than \$20 in the certification month or in the immediately preceding 12 months prior to the certification month are eligible for the h/u standard. BEM 554, p. 18.

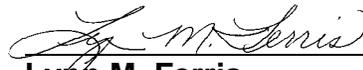
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with Department policy when it calculated the Petitioner's October 2015 benefits and failed to include the h/u standard of \$ [REDACTED]

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. The Department shall recalculate the October 2015 FAP benefits ongoing and shall include a home heating allowance of \$ [REDACTED] when recalculating the benefits.
2. The Department shall issue a FAP supplement to the Petitioner, if any is due after recalculating the benefits, for October 1, 2015, FAP benefits ongoing in accordance with Department policy.



Lynn M. Ferris

Administrative Law Judge
for Nick Lyon, Director

Department of Health and Human Services

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

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:

