

**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.: 15-021719
Issue No.: 3001; 3003
Agency Case No.: [REDACTED]
Hearing Date: February 10, 2016
County: WAYNE-DISTRICT 31

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, an in-person hearing was held on February 10, 2016, from Detroit, Michigan. The Petitioner was represented by [REDACTED] (Petitioner). The Department was represented by [REDACTED], Eligibility Specialist; and [REDACTED], Assistant Payment Supervisor.

ISSUE

Did the Department properly decrease Petitioner's Food Assistance Program (FAP) benefits to \$64 effective November 1, 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. Petitioner is an ongoing recipient of FAP benefits.
2. In October 2015, the Department processed Petitioner's submitted redetermination.
3. On [REDACTED] the Department conducted an in-person redetermination interview and discovered that Petitioner was no longer eligible for the mandatory heat and utility standard (h/u). See Exhibit A, p. 1.
4. On [REDACTED], Petitioner also informed the Department that he had ongoing medical expenses.

5. On [REDACTED], Petitioner submitted a Shelter Verification that indicated his monthly shelter obligation was \$425 and that his heating/cooling, electric, water/sewer, and cooking fuel were all included in his rent. See Exhibit A, pp. 6-7.
6. On [REDACTED], the Department sent Petitioner a Notice of Case Action notifying him that he was approved for \$64 effective [REDACTED]. See Exhibit A, pp. 4-5. Petitioner's FAP benefits decreased from \$194 to \$64. See Exhibit A, pp. 11 and 14.
7. On [REDACTED], Petitioner filed a hearing request, protesting the Department's action. See Exhibit A, p. 2.
8. On [REDACTED], the Michigan Administrative Hearing System (MAHS) sent Petitioner a Notice of Hearing informing him of a hearing scheduled on [REDACTED].
9. On or around [REDACTED], Petitioner requested an in-person hearing.
10. On [REDACTED], the Administrative Law Judge (ALJ) sent Petitioner an Adjournment Order for In Person Hearing.
11. On [REDACTED], MAHS sent Petitioner a Notice of Hearing informing him of an in-person hearing scheduled on February 10, 2016.
12. On [REDACTED], both parties were present for the 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.

It was not disputed that the certified group size is one and that Petitioner is a senior/disabled/disabled veteran (SDV) member. The Department presented the November 2015 FAP budget for review. See Exhibit A, pp.14-15.

First, the Department calculated Petitioner's gross unearned income to be \$747. See Exhibit A, p. 14. This amount consisted of the following: (i) \$733 in Supplemental Security Income (SSI) income; and (ii) \$14 monthly average in SSP income. See Exhibit A, pp. 8-10 and see BEM 503 (October 2015), pp. 28-33. The undersigned finds that the Department properly calculated Petitioner's unearned income in accordance with Department policy. See BEM 503, pp. 28-33.

Next, the Department properly applied the \$154 standard deduction applicable to Petitioner's group size of one. RFT 255 (October 2015), p. 1. The Department also did not budget any allowable medical expenses for the Petitioner. See Exhibit A, p. 14. The Department previously budgeted a medical expense for the Petitioner, which was his Medicare Part B premium. See Exhibit A, p. 11. However, both parties agreed that Petitioner is no longer responsible for this premium. Therefore, the Department removed this medical expense, which resulted in the Department no longer budgeting any medical deductions. However, Petitioner argued that he is responsible for out-of-pocket medical expenses. Specifically, Petitioner alleged the following out-of-pocket medical expenses: (i) prescription co-pays; (ii) "Boost" nutrition drink per his doctor's recommendation; (iii) telephone (medical equipment) to assist in contacting individuals due to speech limitations; and (iv) and other out-of-pocket expenses. During the hearing, Petitioner provided for the first time copies of his prescription co-pays. See Exhibit 1, pp. 1-23.

In response, the Department testified that Petitioner did inform the Department of his ongoing medical expenses at the redetermination interview on [REDACTED]. The Department appeared to testify that the Petitioner only informed the Department that his only out-of-pocket expenses were his prescription co-pays. Nonetheless, the Department testified it informed Petitioner to provide proof of the medical expenses, but he failed to provide any copies until today's hearing. The Department testified that it did not issue any Verification Checklist (VCL) requesting proof of his medical expenses after his redetermination interview.

Policy states that for groups with one or more SDV member, the Department allows medical expenses that exceed \$35. BEM 554 (October 2015), 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 medical bill is not overdue if one of the following conditions exists:

- Currently incurred (for example, in the same month, ongoing, etc.).

- Currently billed (client is receiving the bill for the first time for a medical expense provided earlier and the bill is not overdue).
- Client made a payment arrangement before the medical bill became 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.

Based on the foregoing information and evidence, the undersigned finds that the Department failed to request verification of Petitioner's medical expenses in accordance with Department policy. See BEM 554, p. 11. Both parties acknowledged that Petitioner informed the Department that he was responsible for medical expenses at his redetermination interview on [REDACTED]. In fact, Petitioner's provided as evidence medical expenses that might possibly qualify as an allowable medical expense. See Exhibit 1, pp. 1-23. Nevertheless, the undersigned does not conclude one way or another that Petitioner should be eligible for a medical expense deduction. The undersigned is only saying that the Department should have requested verification of his medical expenses at the time of his redetermination in order to determine if he has an allowable medical deduction. See BEM 554, p. 11; BAM 130 (July 2015), pp. 1-9 (Obtaining verification via a Verification Checklist); and BAM 210 (October 2015), p. 15 (The DHS-3503, Verification Checklist, should be sent after the redetermination interview for any missing verifications allowing 10 days for their return). Because the Department failed to request verification of Petitioner's medical expenses, the Department improperly calculated Petitioner's FAP budget in accordance with Department policy. The Department will initiate verification of Petitioner's medical expenses to determine if he has an allowable medical expense deduction.

It should also be noted that Petitioner alleged additional medical expenses during the hearing, such as his nutrition drink and his telephone. Petitioner must respond to the VCL and provide proof of the medical expenses at which point the Department will make a determination if it is an allowable medical expense. But the undersigned will point out that at this point the undersigned disagrees that his telephone is an allowable medical expense. Allowable medical expenses include the costs of medical supplies, sickroom equipment (including rental) or other prescribed medical equipment (excluding the cost for special diets). BEM 554, p. 10. However, Petitioner failed to present any evidence of the actual cost of his telephone equipment. The undersigned did witness a telephone bill during the hearing, however, the undersigned finds such an expense to fall under the category of a telephone deduction. A FAP group which has no

heating/cooling expense but has a responsibility to pay for a traditional land-line service, cellular phone service including per-minute or per-call service and voice over Internet protocol (VoIP) must use the telephone standard. BEM 554, p. 22. The standard covers only the telephone expense. BEM 554, p. 22. The Petitioner has to understand there are two different costs here, the actual cost of the telephone equipment itself and the cost of the traditional land-line service which allows him to use this equipment. Based on testimony and evidence presented, the undersigned finds that Petitioner's current bill from the telephone provider falls under the category of a telephone deduction rather than an allowable medical expense in accordance with Department policy. See BEM 554, p. 22. Of course, this could change if Petitioner responds to the VCL with other documentation stating otherwise. But at this point, Petitioner would be only eligible for the telephone standard deduction as no evidence was presented by Petitioner showing the actual costs of the equipment itself.

As to Petitioner's nutrition drink, Petitioner must submit receipts to the Department in order for the Department to determine if it is an allowable medical expense. See BEM 554, pp. 9-10. Such an expense might fall under the category over-the-counter medication (including insulin) and other health-related supplies (bandages, sterile gauze, incontinence pads, etc.) when recommended by a licensed health professional. See BEM 554, p. 10.

Finally, the Department presented Petitioner's Excess Shelter Deduction budget (shelter budget) for November 2015. See Exhibit A, p. 16. The shelter budget indicated Petitioner's housing expenses were \$425, which Petitioner did not dispute. See Exhibit A, p. 16. Also, Petitioner's shelter budget showed that he was not receiving the \$539 heat and utility (h/u) standard. See Exhibit A, p. 16. The shelter budget showed that Petitioner only receives the telephone standard of \$33. RFT 255, p. 1 and see Exhibit A, p. 16.

For groups with one or more SDV members, the Department uses excess shelter. See BEM 554, p. 1. In calculating a client's excess shelter deduction, the Department considers the client's monthly shelter expenses and the applicable utility standard for any utilities the client is responsible to pay. BEM 556 (July 2013), pp. 4-5. The utility standard that applies to a client's case is dependent on the client's circumstances. The mandatory h/u standard, which is currently \$539 and the most advantageous utility standard available to a client, is available only for FAP groups (i) that are responsible for heating expenses separate from rent, mortgage or condominium/maintenance payments; (ii) that are responsible for cooling (including room air conditioners) and verify that they have the responsibility for non-heat electric; (iii) whose heat is included in rent or fees if the client is billed for excess heat by the landlord, (iv) who have received the home heating credit (HHC) in an amount greater than \$20 in the current month or the immediately preceding 12 months, (v) who have received a Low-Income Home Energy Assistance Act (LIHEAP) payment or a LIHEAP payment was made on his behalf in an amount greater than \$20 in the current month or in the immediately preceding 12 months prior to the application/recertification month; (vi) whose electricity

is included in rent or fees if the landlord bills the client separately for cooling; or (vii) who have any responsibility for heating/cooling expense (based on shared meters or expenses). BEM 554, pp. 16-20 and RFT 255, p. 1.

To show responsibility for heating and/or cooling expenses, acceptable verification sources include, but are not limited to, current bills or a written statement from the provider for heating/cooling expenses or excess heat expenses; collateral contact with the landlord or the heating/cooling provider; cancelled checks, receipts or money order copies, if current as long as the receipts identify the expense, the amount of the expense, the expense address, the provider of the service and the name of the person paying the expense; DHS-3688 shelter verification; collateral contact with the provider or landlord, as applicable; or a current lease. BEM 554, pp. 16-20. For groups that have verified that they own or are purchasing the home that they occupy, the heat obligation needs to be verified only if questionable. BEM 554, p. 16.

FAP groups not eligible for the mandatory h/u standard who have other utility expenses or contribute to the cost of other utility expenses are eligible for the individual utility standards that the FAP group has responsibility to pay. BEM 554, p. 19. These include the non-heat electric standard (\$119 as of October 1, 2015) if the client has no heating/cooling expense but has a responsibility to pay for non-heat electricity; the water and/or sewer standard (currently \$81) if the client has no heating/cooling expense but has a responsibility to pay for water and/or sewer separate from rent/mortgage; the telephone standard (currently \$33) if the client has no heating/cooling expense but has a responsibility to pay for traditional land-line service, cell phone service, or voice-over-Internet protocol; the cooking fuel standard (currently \$33) if the client has no heating/cooling expense but has a responsibility to pay for cooking fuel separate from rent/mortgage; and the trash removal standard (currently \$19) if the client has no heating/cooling expense but has a responsibility to pay for trash removal separate from rent/mortgage. BEM 554, pp. 20-24 and RFT 255, p. 1.

Sometimes the excess shelter deduction calculation will show more than one utility deduction. However, if the client is eligible for the \$539 mandatory h/u, that is all the client is eligible for. If he is not eligible for the mandatory h/u, he gets the sum of the other utility standards that apply to his case. BEM 554, pp. 15 and 20.

In this case, the evidence established that Petitioner was not eligible for the \$539 mandatory h/u standard in accordance with Department policy. See BEM 554, pp. 15-20. Petitioner's shelter rent included all utilities such as heat, electric, trash etc... See Exhibit A, pp. 6-7 (Petitioner's submitted Shelter Verification received on October 13, 2015). The Department properly determined that Petitioner was only eligible for the telephone standard deduction.

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 the Department did not act in accordance with Department policy when it improperly calculated Petitioner's FAP allotment effective [REDACTED].

Accordingly, the Department's FAP 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. Recalculate Petitioner's FAP budget (including requesting verification of any allowable medical expenses) effective [REDACTED] ongoing;
2. Issue supplements to Petitioner for any FAP benefits he was eligible to receive but did not from [REDACTED] ongoing; and
3. Notify Petitioner of its decision.



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

Date Signed: **February 16, 2016**

Date Mailed: **February 16, 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:

