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.: 15-023984
Issue No.: 3008
Agency Case No.: [redacted]
Hearing Date: February 11, 2016
County: WAYNE-DISTRICT 49

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 telephone hearing was held on February 11, 2016, from Detroit, Michigan. The Petitioner was represented by [redacted] (Petitioner). The Department failed to have a representative present for the hearing.

ISSUE

Did the Department properly calculate Petitioner's Food Assistance Program (FAP) allotment effective December 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. On October 21, 2015, the Department sent Petitioner a Notice of Case Action notifying her that her FAP benefits decreased to [redacted] effective December 1, 2015 to March 31, 2017. See Exhibit A, pp. 6-7.

3. On December 29, 2015, Petitioner filed a hearing request, protesting the Department's action. See Exhibit A, pp. 2-3.

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.

As a preliminary matter, the Michigan Administrative Hearing System (MAHS) attempted to contact the Department in order to participate in the hearing, but to no avail. As such, the hearing proceeded with only the Petitioner present.

Petitioner indicated that her certified group size is one and that she is a senior/disabled/disabled veteran (SDV) member. As part of the evidence record, the Department did present the December 2015 budget in which the undersigned and Petitioner reviewed. See Exhibit A, pp. 8-9.

First, the Department calculated Petitioner's gross unearned income to be [redacted]. See Exhibit A, p. 8. This amount consisted of the following: (i) [redacted] in Retirement, Survivors, and Disability Insurance (RSDI); [redacted] in Supplemental Security Income (SSI) income; and [redacted] monthly average in SSP income. See Exhibit A, pp. 8 and 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 [redacted] standard deduction applicable to Petitioner's group size of one. See Exhibit A, p. 8 and RFT 255 (October 2015), p. 1. The Department also calculated Petitioner's medical deduction to be [redacted]. See Exhibit A, p. 8. Policy states that for groups with one or more SDV member, the Department allows medical expenses that exceed [redacted]. BEM 554 (October 2015), p. 1. Petitioner indicated that her monthly out-of-pocket expenses are approximately [redacted] per month, but that she also takes over-the-counter supplements recommended by her doctor that range from [redacted] per month. Petitioner testified that she never previously reported the supplements that she is responsible to pay for to the Department.

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 satisfy its burden of showing that it properly calculated Petitioner's medical expense deduction. Even though Petitioner testified that she never informed the Department of her over-the-counter supplements, it is the Department's burden of proof to show that it properly calculated the medical expense deduction. The Department was obviously aware that Petitioner had medical expenses as the budget reflects a [redacted] medical deduction. See Exhibit A, p. 8. Because the Department failed to be present for the hearing and was unable to show how it calculated the medical deduction, the Department failed to satisfy its burden of showing that it properly calculated this deduction. 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 initiate verification of Petitioner's medical expenses to determine if she has an allowable medical expense deduction. See BEM 554, p. 11.

It should be noted that allowable expenses include over-the-counter medication (including insulin) and other health-related supplies (bandages, sterile gauze, incontinence pads, etc.) when recommended by a licensed health professional. Thus, it initially appears that Petitioner's over-the-counter supplements recommended by her doctor might be an allowable medical expense. See BEM 554, p. 11. However, this will not be known until Petitioner provides such verification and the Department is able to make a determination. See BEM 554, p. 11 and BAM 130 (July 2015), pp. 1-9 (Obtaining verification via a Verification Checklist).

Finally, the Department presented Petitioner's Excess Shelter Deduction budget (shelter budget) for December 2015. See Exhibit A, p. 10. The shelter budget indicated Petitioner's housing expenses were [redacted], which Petitioner did not dispute. See Exhibit A, p. 10. Also, Petitioner's shelter budget showed that she was not receiving the [redacted]

heat and utility (h/u) standard. See Exhibit A, p. 10. The shelter budget showed that Petitioner only receives the telephone standard of [redacted] and non-heat electric standard of [redacted]. RFT 255, p. 1 and see Exhibit A, p. 10.

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 she is not eligible for the mandatory h/u, she gets the sum of the other utility standards that apply to her case. BEM 554, pp. 15 and 20.

In this case, Petitioner testified that she has a window air conditioner and that she pays for this cooling. Policy states that 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. BEM 554, p. 16. As part of the evidence record, Petitioner submitted verification of her electric expenses to the Department on October 22, 2015. See Exhibit A, p. 5 (DTE Energy bill with a due date of September 4, 2015). Furthermore, acceptable verification sources for non-heat electric include, but are not limited to current bills or a written statement from the provider for electric expenses. See BEM 554, p. 17. The undersigned reviewed the verification and finds that it is an acceptable verification source to show Petitioner has a responsibility to pay for her cooling (non-heat electric). As such, the evidence presented that Petitioner is eligible for the [redacted] in accordance with Department policy because her cooling is separate from her housing costs. See BEM 554, p. 17. It should be noted that Petitioner also argued that she has an electric heater as well that she is responsible to pay for via her electric bill and would also qualify her for the h/u standard. Nonetheless, the undersigned finds that Petitioner is eligible for the h/u standard for the above stated reasons.

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 benefits effective December 1, 2015.

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 the FAP budget (including requesting verification of any allowable medical expenses) effective December 1, 2015 ongoing;

2. Apply Petitioner's [redacted] effective December 1, 2015;

3. Issue supplements to Petitioner for any FAP benefits she was eligible to receive but did not from December 1, 2015, ongoing; and

4. Notify Petitioner of its FAP decision.

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

Date Signed: **2/18/2016**

Date Mailed: **2/18/2016**

EF/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: [redacted]