

**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.: 16-000206
Issue No.: 3004; 3008
Agency Case No.: [REDACTED]
Hearing Date: February 22, 2016
County: WAYNE-DISTRICT 17

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 22, 2016, from Detroit, Michigan. The Petitioner was represented by [REDACTED] (Petitioner). The Department was represented by [REDACTED], Hearings Facilitator.

ISSUES

Did the Department fail to process Petitioner's alleged Food Assistance Program (FAP) application(s) submitted in November 2015 and/or early December 2015?

Did the Department properly calculate Petitioner's FAP benefits effective [REDACTED], [REDACTED]

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On [REDACTED] Petitioner applied for FAP benefits.
2. On [REDACTED], the Department sent Petitioner a Notice of Case Action notifying him that his FAP benefits were approved for \$41 (pro-rated) effective [REDACTED] to [REDACTED], and approved for \$80 effective [REDACTED]. See Exhibit B, pp. 1-2.
3. On [REDACTED], the Department sent Petitioner a Notice of Case Action notifying him that his FAP benefits decreased to \$47 effective [REDACTED]. See Exhibit A, pp. 5-8.

4. On [REDACTED], Petitioner filed a hearing request, protesting the Department's action. See Exhibit A, p. 2.

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.

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

Preliminary matters

First, Petitioner argued that the Department failed to process a FAP application that he submitted in November 2015 and/or early December 2015. However, the Department indicated that the only application it had on file was dated [REDACTED]. Petitioner failed to present any copy of his alleged application. As such, the undersigned finds that the Department properly did not process any alleged FAP application in November 2015 and/or early December 2015. See BAM 110 (July 2015), pp. 1-23 (application filing and registration) and BAM 115 (October 2015), pp. 1-35 (application processing).

Second, Petitioner disputed the amount of his FAP allotment. Therefore, the undersigned will review whether the Department properly calculated Petitioner's FAP allotment effective [REDACTED]. See BAM 600 (October 2015), pp. 1-6.

December 2015 and January 2016 FAP benefits

On [REDACTED], the Department sent Petitioner a Notice of Case Action (case action) notifying him that his FAP benefits were approved for \$41 (pro-rated) effective

[REDACTED], and approved for \$80 effective [REDACTED]. See Exhibit B, pp. 1-2. Petitioner disputed the calculation of his FAP allotment. As such, the undersigned reviewed the FAP budget located in the case action dated [REDACTED], to determine if the Department properly calculated Petitioner's allotment. See Exhibit B, p. 2. It should be noted the budget included the same calculations for both the December 2015 and January 2016 benefits periods (i.e., same gross unearned income). Thus, the undersigned addresses both benefit periods below.

First, it was not disputed that the certified group size is one and that Petitioner is a senior/disabled/disabled veteran (SDV) member.

Second, the Department calculated Petitioner's gross unearned income to be \$673, which he did not dispute. See Exhibit B, p. 2.

Third, the Department properly applied the \$154 standard deduction applicable to Petitioner's group size of one. RFT 255 (October 2015), p. 1. Moreover, Petitioner did not dispute that the Department calculated his medical expenses, dependent care, and child support payments to be zero. See Exhibit B, p. 2.

Fourth, the Department indicated Petitioner's housing expenses were \$400, which he did not dispute. See Exhibit B, p. 2. Also, Petitioner's shelter budget showed that he was not receiving the \$539 heat and utility (h/u) standard nor any of the mandatory individual standards. See Exhibit B, p. 2.

For groups with one or more SDV members, the Department uses excess shelter. See BEM 554 (October 2015), 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 Petitioner's application, he only indicated that his monthly rental obligation was \$400. However, during the hearing, Petitioner argued that he has a responsibility to pay for heat and electrical expenses. On or around [REDACTED], Petitioner testified that he did inform his caseworker that he was responsible for utility expenses. Petitioner does not dispute that the utility bill is not in his name, but he testified that he informed his caseworker that he pays his landlord an additional \$198 per month for the utility expenses. Petitioner testified that the caseworker informed him that because the service bill is not in his name, this is not an allowable expense. Therefore, Petitioner testified he submitted only proof of his rental expense in the amount of \$400 the following day. The Department acknowledged that it received verification of his monthly rental obligation on [REDACTED].

For groups with one or more SDV member, the Department allows excess shelter. BEM 554, p. 1. An expense is allowed if all of the following:

- the service is provided by someone outside of the FAP group.

- someone in the FAP group has the responsibility to pay for the service in money.
- verification is provided, if required.

BEM 554, p. 1. Responsibility to pay means that the expense is in the name of a person in the FAP group. BEM 554, p. 2. Except, if the expense is in someone else's name, allow the expense if the FAP group claims the expense and the service address on the bill is where they live. BEM 554, p. 2.

However, based on the above policy, the utility expense does not have to be in Petitioner's name as long as he claims the expense and the service address on the bill is where he lives. BEM 554, p. 2. Furthermore, the undersigned finds Petitioner's testimony credible that he informed his caseworker that he was responsible for the utility expense. Petitioner's credibility is supported by the fact that he submitted proof of his rental obligation the following day. Submitting such documentation the following day after the FAP interview shows to the undersigned that a conversation did take place as to his shelter obligation and would support his position that he did inform his caseworker of the utility expenses.

Policy states that the Department verifies heating separate from housing costs and non-heat electric at application, redetermination, or when a change is reported. BEM 554, pp. 16-17. Acceptable verification sources include, but are not limited to:

- Current bills or a written statement from the provider for electric expenses.
- Collateral contact with the electric provider.
- Cancelled checks, receipts or money order copies, if current. The receipt must contain minimum information to 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.
- Current lease.

BEM 554, pp. 16-17.

Based on the above policy, the Department should have verified Petitioner's heating and/or non-heat electric expense at the time of application. Even though Petitioner did not specifically indicate in the application, the undersigned concluded above that Petitioner did inform the Department of the utility expenses at the time of application, which was during his interview. See BEM 554, pp. 16-17 and BAM 115, pp. 16-17 (The purpose of the interview is to explain program requirements to the applicant and to gather information for determining the group's eligibility). Therefore, the Department will recalculate and redetermine Petitioner's eligibility for the mandatory h/u standard or individual standards in accordance with Department policy. See BEM 554, pp. 16-17.

February 2016 FAP benefits

On [REDACTED], the Department sent Petitioner a case action notifying him that his FAP benefits decreased to \$47 effective [REDACTED]. See Exhibit A, pp. 5-8. Petitioner also disputed the amount of his FAP allotment for February 2016. Again, the undersigned reviewed the FAP budget located in the case action dated [REDACTED], [REDACTED] to determine if the Department properly calculated Petitioner's allotment. See Exhibit B, p. 2.

First, it was not disputed that the certified group size is one and that Petitioner is a SDV member.

Second, the Department calculated Petitioner's gross unearned income to be \$747, which he disputed. See Exhibit A, p. 6. The Department indicated that Petitioner's income consisted of: (i) \$733 in Supplemental Security Income (SSI) and (ii) 14 monthly average in State SSI Payments (SSP) income (\$42 issued quarterly SSP income). See BEM 503 (October 2015), pp. 28-33. As part of the evidence record, the Department presented Petitioner's State On-Line Query (SOLQ), which is a computer data exchange with the Social Security Administration (SSA) that assists in the verification of Social Security numbers (SSNs), Retirement, Survivors and Disability Insurance (RSDI), Supplemental Security Income (SSI) and Medicare benefits. See BAM 801 (July 2015), pp. 1-4. A review of the SOLQ shows that Petitioner received a gross payable SSI income of \$659.70 and that SSA is deducting \$73.30 from each check due to an overpayment. See Exhibit A, p. 12. Petitioner did not dispute that the overpayment is being recovered. Thus, it appears the Department took the \$659.70 plus the \$73.30, which resulted in the calculation of his \$733 SSI income.

In response, Petitioner argued that his gross unearned income should be \$659.70 (plus the \$14 SSP payment) and not include the overpayment in the calculation.

The Department counts the gross amount of current SSA-issued SSI as unearned income. BEM 503, p. 32. SSI amounts withheld to recoup overpayments due to an intentional program violation (IPV) as defined below are also included in the gross amount. BEM 503, p. 32. IPV means there was a finding of fraud or an agreement to repay in lieu of prosecution. BEM 503, p. 32. The Department counts recouped SSI only if IPV information is volunteered by the SSI recipient or other reliable source. BEM 503, p. 32. Do not initiate any contacts. BEM 503, p. 32.

Moreover, BEM 500, defines gross income as the amount of income before any deductions such as taxes or garnishments. BEM 500 (January 2015), p. 4. BEM 500 further states that amounts deducted by an issuing agency to recover a previous overpayment or ineligible payment are not part of gross income. BEM 500, p. 6. These amounts are excluded as income. BEM 500, p. 6. Except, the following overpayment amounts must be included in gross income:

- Any portion of an overpayment (that is normally countable) if the original payment was excluded income when received.
- Cash assistance recoupment amounts due to Intentional Program Violation (IPV) are automatically counted for FAP in Bridges.
- Supplemental Security Income (SSI) amounts recouped due to IPV are included in countable gross income for cash assistance programs and FAP.

IPV means there is a finding of fraud or an agreement to repay in lieu of prosecution. Do not exclude recouped SSI when IPV information is volunteered by the SSI recipient or other reliable source. Do not initiate any contacts to obtain this information.

BEM 500, p. 6.

Based on the foregoing information, the evidence is sufficient to conclude that Petitioner did not meet any of the above exceptions in which his overpayment must be included in the gross income. See BEM 500, p. 6. Petitioner did not dispute that the overpayment is being recovered, but nothing indicating that it met the above exceptions to include it as part of the gross income. Because Petitioner does not meet any of the above exceptions, the Department will not include the overpayment as part of the gross income, which results in his SSI gross income being \$659.70. See BEM 500, p. 6 and Exhibit A, p. 11-12. Please note, the Department will also add the \$14 SSP payment to the overall gross unearned income. See Exhibit A, p. 10.

Third, the Department properly applied the \$154 standard deduction applicable to Petitioner's group size of one. RFT 255, p. 1. Moreover, Petitioner did not dispute that the Department calculated his medical expenses, dependent care, and child support payments to be zero. See Exhibit A, p. 6.

Fourth, the Department indicated Petitioner's housing expenses were \$400, which he did not dispute. See Exhibit A, p. 6. Also, as stated in the previous analysis, the Department has to redetermine Petitioner's eligibility for the mandatory h/u standard or individual standards as well for his FAP benefits effective [REDACTED].

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 (i) the Department acted in accordance with Department policy when it properly did not process any alleged FAP application in November 2015 and/or early December 2015; and (ii) the Department did not act in accordance with Department policy when it improperly calculated Petitioner's FAP allotment effective [REDACTED].

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to alleged FAP application and **REVERSED IN PART** with respect to FAP calculation effective [REDACTED], ongoing.

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 verification of the mandatory heat and utility standard or individual standards, effective [REDACTED];
2. Recalculate Petitioner's unearned income, including the SSI income and exclude the SSI overpayment as part of the gross income effective [REDACTED];
3. Issue supplements to Petitioner for any FAP benefits he was eligible to receive but did not from [REDACTED], ongoing; and
4. Notify Petitioner of its decision.



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

Date Signed: **MARCH 1, 2016**

Date Mailed: **MARCH 1, 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:

