

**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.: 16-000214
Issue No.: 3008
Agency Case No.: [REDACTED]
Hearing Date: February 22, 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 22, 2016, from Detroit, Michigan. The Petitioner was represented by Aaron Shelton, Petitioner; and his Authorized Hearing Representative (AHR), [REDACTED], from [REDACTED]. The Department was represented by [REDACTED], Hearings Facilitator.

ISSUE

Did the Department properly calculate Petitioner's Food Assistance Program (FAP) allotment effective [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. Petitioner is an ongoing recipient of FAP benefits. See Exhibit A, p. 9.
2. For November 2015, Petitioner received a FAP allotment of \$17. See Exhibit A, p. 9 and Exhibit B, pp. 1-3.
3. On [REDACTED], Petitioner submitted a Shelter Verification (DHS-3688), which indicated that his monthly shelter obligation increased to \$450 and that the heating/cooling, electric, water/sewer, cooking fuel, and trash removal are included in the rent. See Exhibit A, pp. 5-6.

4. On [REDACTED], the Department sent Petitioner a Notice of Case Action notifying him that his FAP benefits increased to \$62 effective [REDACTED]. See Exhibit A, pp. 7-8. However, Petitioner's Eligibility Summary indicated that he in fact received \$72 effective December 2015, ongoing. See Exhibit A, pp. 1 and 9 (Hearing Summary indicated a new Notice of Case Action was generated on [REDACTED] informing of the increase to \$72 because the Department included the telephone expense).
5. On [REDACTED], Petitioner's AHR 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.

Preliminary matters

First, on [REDACTED], Petitioner's AHR filed a hearing request and requested that the hearing be scheduled as in-person. See Exhibit A, pp. 2-3. Shortly after commencement of the hearing, it was discovered that a Notice of Hearing was never issued to the AHR by the Michigan Administrative Hearing System (MAHS), which would have informed her of the hearing. The AHR indicated that she was informed of the hearing scheduled today by the Petitioner. Moreover, Petitioner's hearing was not scheduled as an in-person hearing as requested on [REDACTED]. Nonetheless, Petitioner's AHR waived her hearing rights and indicated that the hearing could proceed as a telephone hearing. As such, the hearing proceeded accordingly.

Second, Petitioner's AHR also disputed the amount of his FAP allotment effective [REDACTED], ongoing. As such, the undersigned addresses below whether the Department properly calculated Petitioner's FAP allotment effective [REDACTED], ongoing.

FAP allotment – November 2015

It was not disputed that the certified group size is one. The Department presented the November 2015 FAP budget for review. See Exhibit B, pp. 1-2.

First, the Department calculated Petitioner's gross unearned income to be \$747, which the AHR did not dispute.

Second, the Department properly applied the \$154 standard deduction applicable to Petitioner's group size of one. RFT 255 (October 2015), p. 1. Petitioner's AHR also did not dispute that the dependent care, medical, and child support deductions were calculated as zero. See Exhibit B, p. 1. Once the Department subtracts the \$154 standard deduction, this results in an adjusted gross income of \$593. See Exhibit B, p. 1.

Third, the Department presented the FAP – Excess Shelter Deduction budget (shelter budget) for November 2015. See Exhibit B, p. 3. The shelter budget indicated that Petitioner's monthly housing expense was \$300. See Exhibit B, p. 3.

At the hearing, Petitioner testified that his rent increased to \$450 on or around October 2015. However, Petitioner testified that the Department first became aware and received verification of the increase on [REDACTED]. See Exhibit A, pp. 5-6. The Department did not increase Petitioner's rent to \$450 until December 2015, the month after the change was reported. See Exhibit B, p. 3.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (July 2015), p. 10. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, p. 10. Other changes must be reported within 10 days after the client is aware of them. BAM 105, p. 11. These include, but are not limited to, changes in address and shelter cost changes that result from the move. BAM 105, p. 11. For FAP cases, the Department acts on a change reported by means other than a tape match within 10 days of becoming aware of the change. BAM 220 (October 2015), p. 7. Changes which result in an increase in the household's benefits must be effective no later than the first allotment issued 10 days after the date the change was reported, provided any necessary verification was returned by the due date. BAM 220, p. 7.

Based on the foregoing information, the Department properly calculated Petitioner's monthly shelter obligation to be \$300 for November 2015. Even though the rent increased to \$450 in October 2015, Petitioner did not report and provide verification of the change until November 2015. See Exhibit A, pp. 5-6. Based on the above policy, the December 2015 FAP benefits will be the first month affected by the reported change and in which the benefits would increase. See BAM 220, p. 7.

Also, Petitioner's shelter budget showed that he was not receiving the \$539 heat and utility (h/u) standard nor any of the individual standards. See Exhibit B, p. 3.

For groups with no senior/disabled/disabled veteran (SDV) member, the Department allows excess shelter up to the maximum amount, which is \$504. See BEM 554 (October 2015), p. 1 and RFT 255, p. 1. 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 rent included all utilities such as heat, electric, trash etc...

Furthermore, the total shelter obligation is calculated by adding Petitioner's housing expenses to the utility credit; this amount is found to be \$300. See Exhibit B, p. 3. Then, the Department subtracts the total shelter amount from fifty percent of the \$593 adjusted gross income. Fifty percent of the adjusted gross income is \$296. See Exhibit B, p. 3. When the Department subtracts the total shelter amount from fifty percent of the gross income, the excess shelter amount is found to be \$4. See Exhibit B, p. 3.

The Department then subtracts the \$4 excess shelter deduction from the \$593 adjusted gross income, which results in a net income of \$589. See Exhibit B, pp. 1-2. A chart listed in RFT 260 is used to determine the proper FAP benefit issuance. Based on Petitioner's group size and net income, the Department properly determined that Petitioner's FAP benefit issuance is found to be \$17 effective November 1, 2015. RFT 260 (October 2015), p. 8.

FAP allotment – December 2015, ongoing

It was not disputed that the certified group size is one. The Department presented the December 2015 FAP budget for review. See Exhibit A, pp. 10-11.

First, the Department calculated Petitioner's gross unearned income to be \$747, which the AHR did not dispute.

Second, the Department properly applied the \$154 standard deduction applicable to Petitioner's group size of one. RFT 255, p. 1. Petitioner's AHR also did not dispute that the dependent care, medical, and child support deductions were calculated as zero. See Exhibit A, p. 10. Once the Department subtracts the \$154 standard deduction, this results in an adjusted gross income of \$593. See Exhibit A, p. 10.

Third, the Department presented Petitioner's shelter budget for December 2015. See Exhibit A, p. 12. The shelter budget indicated that Petitioner's housing expenses were \$450, which the AHR did not dispute. Moreover, as stated in the previous analysis, Petitioner is not eligible for the \$539 mandatory h/u standard. See BEM 554, pp. 15-20. However, the Department did include this time the telephone standard of \$33. RFT 255, p. 1 and see Exhibit A, p. 12.


Furthermore, the total shelter obligation is calculated by adding Petitioner's housing expenses to the utility credit; this amount is found to be \$483. See Exhibit A, p. 12. Then, the Department subtracts the total shelter amount from fifty percent of the \$593 adjusted gross income. Fifty percent of the adjusted gross income is \$296. See Exhibit A, p. 12. When the Department subtracts the total shelter amount from fifty percent of the gross income, the excess shelter amount is found to be \$187. See Exhibit A, p. 12.

The Department then subtracts the \$187 excess shelter deduction from the \$593 adjusted gross income, which results in a net income of \$406. See Exhibit A, pp. 10-11. A chart listed in RFT 260 is used to determine the proper FAP benefit issuance. Based on Petitioner's group size and net income, the Department properly determined that Petitioner's FAP benefit issuance is found to be \$72 effective December 1, 2015. RFT 260, p. 6.

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 acted in accordance with Department policy when it properly calculated Petitioner's FAP allotment effective [REDACTED].

Accordingly, the Department's FAP decision is **AFFIRMED**.



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:



