

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-016139
Issue No.: 3008
Case No.: [REDACTED]
Hearing Date: December 15, 2014
County: WAYNE-DISTRICT 19
(INKSTER)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

HEARING DECISION

Following Claimant'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. After due notice, a telephone hearing was held on December 15, 2014, from Detroit, Michigan. Participants on behalf of Claimant included Claimant, [REDACTED], and Claimant's daughter/witness, [REDACTED]. Participants on behalf of the Department of Human Services (Department or DHS) included Jallal Ali, Eligibility Specialist.

ISSUE

Did the Department properly reduce Claimant's Food Assistance Program (FAP) allotment effective November 1, 2014?

FINDINGS OF FACT

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

1. Claimant is an ongoing recipient of FAP benefits.
2. On October 1, 2014, the Department sent Claimant a Notice of Case Action notifying her that her FAP benefits decreased to November 1, 2014 because her shelter deduction amount has changed. See Exhibit 1, pp. 7-8.
3. On November 14, 2014, Claimant filed a hearing request, protesting her FAP allotment. See Exhibit 1, pp. 2-3.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), Department of Human Services Reference Tables Manual (RFT), and Department of Human Services Emergency Relief Manual (ERM).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food Stamp Act of 1977, 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 Family Independence Agency) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001 to .3015.

As a preliminary matter, the Department was going to fax a copy of Claimant's submitted redetermination (as part of Exhibit 1) to this Administrative Law Judge (ALJ). If the Department was unable to retrieve the submitted redetermination, then the Department would fax a blank copy of the redetermination (as part of Exhibit 1). However, neither document was received subsequent to the hearing. As such, this ALJ proceeded with the hearing decision without the requested documentation.

It was not disputed that the group size is one and that Claimant is a senior/disabled/disabled veteran (SDV) member. The Department presented the November 2014 FAP budget for review from the Notice of Case Action dated October 1, 2014. See Exhibit 1, pp. 7-8.

The Department calculated Claimant's gross unearned income amount of \$755. See Exhibit 1, p. 8. Claimant appeared to receive Retirement, Survivors, and Disability Insurance (RSDI) benefits, Supplemental Security Income (SSI) benefits, and State SSI Payments (SSP) issued quarterly (\$14 averaged for each month). However, the Department testified that Claimant received SSI income totaling \$679.70. See Exhibit 1, p. 1. Claimant appeared to possibly receive an SSI advance payment or overpayment recovered amount of \$72.10; however, it was unclear from the SOLQ document. See Exhibit 1, p. 6.

The Department counts the gross benefit amount for RSDI amount as unearned income. See BEM 503 (July 2014), p. 28. The Department also counts the gross amount of current SSA-issued SSI as unearned income. BEM 503, p. 32. Also, SSP are issued quarterly. BEM 503, p. 33. Payments are issued in the final month of each quarter. BEM 503, p. 33. Whenever an SSA-issued independent living or household of another payment is budgeted, the Department counts the corresponding monthly SSP benefit amount as unearned income. BEM 503, p. 33; and see RFT 248 (January 2014), p. 1.

Based on the foregoing information, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it improperly calculated Claimant's unearned income amount. It was unclear why the FAP budget indicated a gross unearned income of \$755, whereas the Department testified the SSI income is \$679.70. See Exhibit 1, pp. 1 and 8. As such, the Department will recalculate Claimant's unearned income in accordance with Department policy. See BEM 503, pp. 28-33 and RFT 248, p. 1.

The Department then properly applied the \$154 standard deduction applicable to Claimant's group size of one. RFT 255 (October 2014) p. 1.

Additionally, the Department indicated that Claimant's housing costs was \$120. See Exhibit 1, p. 8. However, Claimant's witness testified that the rent increased to \$123 effective November 2014. Claimant's witness testified that she submitted proof of her mother's (Claimant) rent increase with the redetermination on or around October 27, 2014. In response, the Department agreed that Claimant submitted a redetermination with accompanying documentation and, therefore, did not obtain the logbook. The Department then acknowledged that it would recalculate Claimant's housing expenses based on Department error.

The Department allows a shelter expense when the FAP group has a shelter expense or contributes to the shelter expense. BEM 554 (October 2014), p. 12. Housing expenses include rent, mortgage, a second mortgage, home equity loan, required condo or maintenance fees, lot rental or other payments including interest leading to ownership of the shelter occupied by the FAP group. BEM 554, pp. 12-13. The Department verifies shelter expenses at application and when a change is reported. BEM 554, p. 14. If the client fails to verify a reported change in shelter, the Department removes the old expense until the new expense is verified. BEM 554, p. 14. The Department verifies the expense and the amount for housing expenses, property taxes, assessments, insurance and home repairs. BEM 554, p. 14.

Based on the foregoing information, the Department did not properly calculate Claimant's housing expenses in accordance with Department policy. First, the Department acknowledged that it miscalculated Claimant's housing expenses in error. Second, Claimant submitted proof of her rent increase with her redetermination before the benefit period had ended. For FAP cases, benefits stop at the end of the benefit period unless a redetermination is completed and a new benefit period is certified. BAM 210 (July 2014), p. 2. When completing the redetermination process, the Department updates data collection by recording changes in circumstances and entering verifications received. BAM 210, p. 15. It should be noted there are also delays in receiving FAP benefits due to not submitting the FAP redetermination by the timely filing date or submitting verifications timely. See BAM 210, p. 17. Nevertheless, the Department acknowledged that it did not properly calculate Claimant's housing expenses and, therefore, the Department will recalculate the housing expenses effective November 1, 2014. See BAM 210, pp. 2, 15, and 17 and BEM 554, pp. 12-14.

Also, the Department did not provide Claimant with the heat/utility standard (including phone) for \$553. See Exhibit 1, p. 8 and RFT 255, p. 1. Again, Claimant's witness testified that she submitted proof of her mother's (Claimant) gas bill with the redetermination on or around October 27, 2014. In response, the Department again acknowledged that it would recalculate Claimant's utility deductions based on Department error.

The heat/utility (h/u) standard covers all heat and utility costs including cooling, except actual utility expenses, for example, installation fees etc. BEM 554, p. 14. FAP groups that qualify for the h/u standard do not receive any other individual utility standards. BEM 554, p. 15. The Department does not require verification of the other utility standards if the household is already eligible for the h/u standard. BEM 554, p. 15.

Effective May 1, 2014, when the Department processes applications, redeterminations, or when a change is reported clients are not automatically allowed the h/u standard. BEM 554, p. 15.

All new FAP applications that were not certified before March 10, 2014, when the Agricultural Act of 2014 went into effect, will be reprocessed to follow the MANDATORY HEAT AND UTILITY STANDARD section in BEM 554 and will be required to provide verification once the systems changes are completed on May 1, 2014. BEM 554, p. 15.

For all FAP groups that received the h/u standard on or before February 7, 2014, the h/u standard will remain in place for a period of five months after the month of their first redetermination or first reported case change occurring on or after May 1, 2014. BEM 554, p. 15. In order to continue receiving the h/u standard beyond the expiration of the five month period, the FAP group must meet the requirements of the MANDATORY HEAT AND UTILITY STANDARD section in BEM 554. BEM 554, p. 15.

A FAP group which has a heating expense or contributes to the heating expense separate from rent, mortgage or condominium/maintenance payments must use the h/u standard. BEM 554, p. 16. The Department verifies heating separate from housing costs at application, redetermination, or when a change is reported. BEM 554, p. 16. Acceptable verification sources include, but are not limited to current bills. BEM 554, p. 16.

Based on foregoing information and evidence, the Department failed to provide Claimant the h/u standard for November 1, 2014, ongoing. Even though Claimant's electricity is included in her rent, she is still eligible for the h/u standard because her heating is separate from the housing costs. See BEM 554, p. 16. Claimant's witness credibly testified that she provided proof of her mother's (Claimant) gas bill before the benefit period had ended. In fact, the Department did not dispute that she submitted it on or around October 27, 2014. Nevertheless, the Department acknowledged that it did

not properly calculate Claimant's utility deduction and therefore, the Department will recalculate Claimant's standard deductions (i.e., utility deduction) effective November 1, 2014. See BAM 210, pp. 2, 15, and 17 and BEM 554, pp. 14-16.

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 Claimant's FAP benefits effective November 1, 2014.

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. Begin recalculating the FAP budget for November 1, 2014, ongoing, in accordance with Department policy;
2. Issue supplements to Claimant for any FAP benefits she was eligible to receive but did not from November 1, 2014, ongoing; and
3. Notify Claimant of its FAP decision in accordance with Department policy.



Eric Feldman
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **12/17/2014**

Date Mailed: **12/17/2014**

EJF / cl

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 party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (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]

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