

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

IN THE MATTER OF:



Reg. No.: 14-016769
Issue No.: 3008
Case No.: [REDACTED]
Hearing Date: December 22, 2014
County: WAYNE-DISTRICT 55
(HAMTRAMCK)

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 22, 2014, from Detroit, Michigan. Participants on behalf of Claimant included Claimant, [REDACTED]. Participants on behalf of the Department of Human Services (Department or DHS) included Tiffany Willingham, Hearings Facilitator; and Yolanda Brantley, Eligibility Specialist.

ISSUE

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

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. See Exhibit 1, pp. 11-17.
2. On October 1, 2014, the Department sent Claimant a Notice of Case Action notifying her that her FAP benefits decreased to \$90 effective November 1, 2014, because her shelter deduction amount has changed. See Exhibit 2, pp. 1-6.
3. On October 28, 2014, the Department sent Claimant a Notice of Case Action notifying her that her FAP benefits decreased to \$16 effective December 1, 2014, due to her shelter deduction amount has changed. See Exhibit 2, pp. 7-12.

4. On November 14, 2014, Claimant filed a hearing request, protesting her FAP allotment. See Exhibit 1, pp. 2-5.
5. On November 21, 2014, the Department sent Claimant a Notice of Case Action notifying her that her FAP benefits will increase to \$116 effective December 1, 2014. See Exhibit 2, pp. 13-19.
6. On November 21, 2014, the Notice of Case Action also notified Claimant that she will receive a \$35 supplement for November 2014, which resulted in the Claimant receiving a total issuance amount of \$125 for November 2014. See Exhibit 1, p. 16 and Exhibit 2, p. 15.

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.

Preliminary matters

First, a review of Claimant's hearing request determined that she disputed her FAP benefits effective November 1, 2013, ongoing. See Exhibit 1, p. 4. However, during the hearing, Claimant testified that she is only disputing her FAP allotment effective November 1, 2014, ongoing. Claimant also indicated in her hearing request that she disputed her FAP allotment for November and December of 2014. See Exhibit 1, pp. 2-5.

Based on the above information, this Administrative Law Judge (ALJ) will determine if the Department properly calculated Claimant's FAP benefits for November and December of 2014. See BAM 600 (October 2014), pp. 4-6 (Michigan Administrative Hearing System (MAHS) may grant a hearing for the current level of benefits or denial of expedited service (FAP only)).

FAP Allotment for November 2014

On October 1, 2014, the Department sent Claimant a Notice of Case Action notifying her that her FAP benefits decreased to \$90 effective November 1, 2014, because her

shelter deduction amount has changed. See Exhibit 2, pp. 1-6. The Department testified that Claimant's FAP benefits decreased due to the deduction of the heat standard change in policy effective October 1, 2014. See Exhibit 1, p. 1. The Department testified that Claimant has turned in a shelter verification form and a utility bill. See Exhibit 1, p. 1. The Department testified that Claimant's FAP benefits increased to \$125 as a supplement for November 2014. See Exhibit 1, pp. 1 and 16.

It was not disputed that the certified 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. See Exhibit 1, p. 6. It should be noted that the other budgets were presented for November 2014; however, the budget located in Exhibit 1 is the most current budget for the benefit period in question. See Exhibit 1, p. 6.

The Department calculated a gross unearned income amount of \$735. Exhibit 1, p. 6. This amount comprised of Claimant's social security income of (\$721) and \$14 monthly State SSI Payments (SSP), which neither party disputed. See BEM 503 (July 2014), pp. 28-33; RFT 248 (January 2014), p. 1; and Exhibit 1, p. 6.

Then, the Department properly applied the \$154 standard deduction applicable to Claimant's group size of one. See RFT 255 (October 2014), p. 1 and see Exhibit 1, p. 6.

Also, the Department indicated that Claimant's medical expenses (deduction) are zero. See Exhibit 1, p. 6. Claimant testified that she does have monthly medical expenses for approximately \$60, which includes transportation and co-pays. Claimant testified that she did not have the verification present with her at the hearing. Claimant testified, though, that she has attempted multiple times to contact the Department in regards to medical expenses, but to no avail. In response, the Department testified that it was unaware of Claimant's medical expenses.

For groups with one or more SDV member, the Department allows medical expenses that exceed \$35. BEM 554 (October 2014), p. 1. 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.

Based on the foregoing information, the Department properly determined that Claimant's medical expenses are zero effective November 1, 2014. Even though Claimant alleged she attempted to contact the Department, Claimant failed to present any evidence that she had such medical expenses totaling \$60. See BEM 554, p. 1 and 11.

Next, Claimant testified that her housing expenses was \$486. The Department did not dispute this calculation; however, it failed to present an excess shelter budget to confirm her housing expenses. Nonetheless, a review of Claimant's updated budget indicated she had an excess shelter deduction of \$354. See Exhibit 1, p. 6. This calculation appears to be the result of housing expenses in the amount of \$486, a non-heat electric standard of \$124, and a telephone standard of \$34.

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, pp. 4-5. The utility standard that applies to a client's case is dependent on the client's circumstances. The mandatory heat and utility (h/u) standard, which is currently \$553 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; 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 (\$124 as of October 1, 2014) 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 \$77) 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 \$34) 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 \$47) 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 \$21) 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; RFT 255, p. 1.

Finally, the Department tells the client what verification is required, how to obtain it, and the due date. BAM 130 (October 2014), p. 3. The Department uses the DHS-3503, Verification Checklist (VCL), to request verification. BAM 130, p. 3. The Department allows the client 10 calendar days (or other time limit specified in policy) to provide the verification that is requested. BAM 130, p. 6.

Based on the foregoing information, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it calculated Claimant's shelter expenses (housing costs and shelter deductions). The Department failed to present an excess shelter budget to accurately determine if the Department properly calculated Claimant's housing costs and deductions. Therefore, the Department will recalculate Claimant's FAP benefits effective November 1, 2014. See BEM 554, pp. 14-25.

FAP Allotment for December 2014

On October 28, 2014, the Department sent Claimant a Notice of Case Action notifying her that her FAP benefits decreased to \$16 effective December 1, 2014, due to her shelter deduction amount has changed. See Exhibit 2, pp. 7-12. On November 21, 2014, the Department sent Claimant a Notice of Case Action notifying her that her FAP benefits will increase to \$116 effective December 1, 2014. See Exhibit 2, pp. 13-19. The increase appeared to be the result of Claimant's submission of a shelter expense and utility bill. See Exhibit 1, p. 1.

It was not disputed that the certified group size is one and that Claimant is an SDV member. The Department presented the December 2014 FAP budget for review. See Exhibit 1, p. 8. The Department calculated a gross unearned income amount of \$755. Exhibit 1, p. 8. The Department testified that Claimant's social security increased by \$20 effective December 1, 2014. However, Claimant testified that her social security income was consistently \$721 for 2014, plus the monthly SSP allotment of \$14.

The Department counts the gross benefit amount for RSDI amount as unearned income. See BEM 503, p. 28. The Department also counts the gross amount of current Social Security Administration (SSA)-issued Supplemental Security Income (SSI) as unearned income. BEM 503, p. 32. 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. FOR RSDI and SSI verification sources, the Department can use a recent check stub(s), consolidated

inquiry, State On-Line Query (SOLQ), etc.. See BEM 503, p. 41. Before determining eligibility, the Department gives the client a reasonable opportunity to resolve any discrepancy between his statements and information from another source. BAM 130, p. 8.

Based on the foregoing information, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it calculated Claimant's unearned income. First, the Department failed to present Claimant's SOLQ to show that it properly calculated the unearned income. See BEM 503, p. 41. Second, there is a discrepancy as to Claimant's social security. The Department must give the Claimant an opportunity to resolve her social security income discrepancy before the Department determines eligibility. See BAM 130, p. 8. As such, the Department will recalculate Claimant's social security income (unearned income) effective December 1, 2014.

Then, the Department properly applied the \$154 standard deduction applicable to Claimant's group size of one. See RFT 255, p. 8 and see Exhibit 1, p. 8.

Also, the Department properly determined that Claimant's medical expenses/deduction is zero for December 2014. This ALJ applies the same reasoning as stated above in the November 2014 FAP analysis as to why Claimant did not receive the medical expense deduction.

Finally, the Department will redetermine Claimant's housing expenses/shelter deductions for December 2014. This ALJ applies the same reasoning as stated above in the November 2014 FAP analysis as to why the Department will redetermine Claimant's housing expense and shelter deductions effective December 1, 2014.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it calculated Claimant's FAP benefits effective November 1, 2014, ongoing.

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: **12/23/2014**

Date Mailed: **12/23/2014**

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:



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