

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

IN THE MATTER OF:



MAHS Reg. No.: 15-015195
Issue No.: 3008; 5001
Agency Case No.: [REDACTED]
Hearing Date: October 15, 2015
County: Wayne-District 31

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 October 15, 2015, from Detroit, Michigan. Petitioner and [REDACTED] his wife, appeared on Petitioner's behalf. The Department was represented by [REDACTED], Hearing Facilitator, and [REDACTED], Medical Contact Worker.

ISSUE

Did the Department properly deny Petitioner's July 2, 2015, application for State Emergency Relief (SER) assistance with roof repairs and for Food Assistance Program (FAP) benefits?

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 July 2, 2015, Petitioner applied for, among other things, SER assistance with roof repairs and FAP benefits for himself and his wife (Exhibit A).
2. Petitioner receives gross monthly Retirement, Survivor and Disability Insurance (RSDI) benefits of \$ [REDACTED] (Exhibit B). Petitioner also receives an annual annuity payment.
3. On July 10, 2015, the Department sent Petitioner a Verification Checklist (VCL) requesting that he provide proof of his property taxes and home insurance and his wife's self-employment by July 20, 2015, (Exhibit F).
4. On July 10, 2015, the Department sent Petitioner an SER Decision Notice informing him, among other things, that his request for SER assistance with non-

energy home repairs was denied because the contractor was not licensed (Exhibit E).

5. On July 24, 2015, Petitioner returned verifications including three quotes for roof repairs, a deed, and an income statement for his wife's business for January to June 2015 showing receipts of \$ [REDACTED] and expenses of \$ [REDACTED] (Exhibit C).
6. On July 24, 2015, the Department sent Petitioner a VCL requesting verification of his wife's self-employment, bank account and checking account and his annuity and checking account by August 3, 2015, (Exhibit I).
7. On July 28, 2015, the Department sent Petitioner a Notice of Case Action notifying him that his FAP application was denied because his net income exceeded the net income limit and because required verifications were not returned (Exhibit H).
8. On August 14, 2015, Petitioner filed a request for hearing disputing the Department's denial of his applications for FAP and for SER assistance with roof repairs.

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).

Petitioner requested a hearing disputing the denial of his FAP application and his SER application for assistance with roof repairs. At the hearing, Petitioner also raised the issue of the Department's denial of his application for SER assistance with furnace repairs/replacement. However, because the hearing request specifically requested a hearing concerning roof repairs and FAP, the hearing proceeded to address those issues only.

FAP Denial

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 July 28, 2015, Notice of Case Action informed Petitioner that his FAP application was denied because (i) the household's net income exceeded the net income limit for the program and (ii) requested verifications of Petitioner's unearned income, home insurance, and property taxes; and Petitioner's wife's bank account, self-employment payments and expense, and checking account were not returned.

The evidence showed that Petitioner provided verifications to the Department in response to the July 10, 2015, VCL. In a VCL sent July 24, 2015, the Department requested the same verifications requested in the July 10, 2015, VCL, as well as additional verifications of Petitioner's unearned income and his wife's checking and savings accounts (Exhibit I). These verifications were due on August 3, 2015. However, before the due date on this VCL expired, the Department sent Petitioner the July 28, 2015, Notice of Case Action denying the application. The Department sends a negative action notice concerning a FAP application when requested verifications are not provided only if (i) the client indicates a refusal to provide the verification or (ii) the time period given has elapsed and the client has not made a reasonable effort to provide it. BAM 130 (July 2015), pp. 6-7. Because the time limit for providing the verifications requested had not expired and there was no evidence that Petitioner refused to provide the verifications, the Department prematurely denied Petitioner's FAP application. Therefore, the Department did not act in accordance with Department policy in denying Petitioner's FAP application due to failure to verify.

The Notice of Case Action also indicated that the FAP application was denied due to excess net income. Because Petitioner received RSDI income based on a disability, he is a senior/disabled/veteran (SDV) member of his FAP group. BEM 550, pp. 1-2. In order to be eligible for FAP, groups with SDV members must have income below the applicable net income limit for the group size. BEM 550 (July 2015), p. 1. Petitioner's group had two members: Petitioner and his wife. Based on a group size of two, the net income limit for FAP eligibility is \$ [REDACTED] RFT 250 (October 2014), p. 1.

The FAP net income budget used to calculate Petitioner's household's FAP net income eligibility was reviewed at the hearing (Exhibit G). The FAP budget showed self-employment income totaling \$ [REDACTED]. There was no evidence presented by the Department supporting its calculation of this income. The only income information in the record was an income statement prepared by Petitioner's wife provided by Petitioner to the Department on July 24, 2015, that showed that, for the period January 2015 to June 2015, Petitioner's wife received gross self-employment income of \$ [REDACTED] and had total expenses of \$ [REDACTED] (Exhibit C).

Countable income from self-employment equals (i) the total proceeds of self-employment **minus** (ii) allowable expenses of producing the income, which is the higher of 25 percent of total proceeds or actual expenses if the client chooses to claim and verify the expenses. BEM 502 (July 2015), p. 3. Because Petitioner's wife did not provide copies of receipts of expenses, she would be eligible for allowable expenses equal to 25 percent of total proceeds. Because the information provided by Petitioner's wife is for a six-month period, the countable income from self-employment based on this information would have to be calculated to show monthly self-employment income. See BEM 505 (July 2015), p. 6. Because the information used by the Department is contrary to the evidence provided by Petitioner, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it calculated Petitioner's wife's self-employment income.

The FAP budget also showed unearned income totaling \$ [REDACTED]. Petitioner confirmed that he received gross monthly RSDI income totaling \$ [REDACTED] and verified

that he received an annual annuity payment totaling about \$ [REDACTED]. Annuity income is unearned income. BEM 503 (July 2015), p. 4. Income received in one month intended to cover several months is converted to a standard monthly amount by dividing the income by the number of months it covers. BEM 505, p. 8. Therefore, although the Department would properly determine a monthly unearned income amount for Petitioner's annuity income by dividing the annual payment by 12, in this case, the Department failed to present any evidence showing the basis for its calculation. Therefore, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it calculated Petitioner's unearned income.

The deductions to income shown on the FAP net budget were also reviewed with Petitioner and his wife. Groups with earned income and SDV members are eligible for the following deductions to income:

- Earned income deduction equal to 20 percent of the group's earned income.
- Dependent care expense.
- Verified, out-of-pocket medical expenses for the SDV member(s) that exceed \$35.00.
- Excess shelter deduction based on monthly shelter expenses and the applicable utility standard.
- Court-ordered child support and arrearages paid to non-household members.
- A standard deduction based on the FAP group size.

BEM 554 (October 2014), p. 1, 14-22; BEM 556 (July 2013), p. 3; RFT 255 (October 2014), p. 1.

The budget showed a standard deduction of \$ [REDACTED] the applicable standard deduction based on Petitioner's one-person group size. RFT 255, p. 1. Petitioner and his wife verified that they had no dependent care or child support expenses. Therefore, the budget properly showed no deduction for those expenses.

The evidence established the earned income deduction and medical deduction were not properly calculated. Because the self-employment income was not properly calculated, the earned income calculation is not correct. The FAP budget showed no medical expense deduction. However, the State Online Query (SOLQ) showed that Petitioner was responsible for his monthly \$ [REDACTED] Part B Medicare premium (Exhibit B). This is an allowable medical expense for an SDV member of a FAP group. BEM 554, p. 10. Therefore, the Department did not act in accordance with policy when it did not consider this expense in calculating Petitioner's medical expense deduction.

The excess shelter deduction budget showed that the Department considered monthly housing expenses of \$ [REDACTED] and the heat and utility standard of \$ [REDACTED]. The \$ [REDACTED] heat and utility standard is available to clients who own their homes and is the most favorable standard applicable to a client. BEM 554, pp. 14-22, RFT 255, p. 1. Therefore, the \$ [REDACTED] utility standard was properly applied in calculating the excess shelter deduction.

Petitioner confirmed that he paid monthly mortgage payments of \$ [REDACTED] but argued that he had property taxes that were not considered. Property taxes are allowable shelter expenses. BEM 554, p. 13. At the hearing, the Department testified that it had access to verification of property taxes through the Wayne County Treasurer and that, even if the client did not provide verification of those expenses, it routinely accessed that information for FAP budgets. In this case, the Department did not act in accordance with policy when it failed to verify property taxes and apply those verified expenses to calculating monthly shelter expenses. Petitioner also alleged that it was paying additional amounts towards property taxes in an agreement with the treasurer's office to avoid foreclosure. Payments that exceed the normal monthly obligations are not deductible as a shelter expense **unless** the payment is necessary to prevent eviction or foreclosure **and** it has not been allowed in a previous budget. BEM 554, p. 13. If Petitioner can establish that the extra tax payments are necessary to prevent foreclosure, then the additional property tax expenses are properly considered in calculating the excess shelter deduction.

Because the Department failed to satisfy its burden of showing that it properly calculated Petitioner's wife's self-employment income and earned income deduction, Petitioner's medical deduction, and the group's excess shelter deduction, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it denied Petitioner's FAP application for excess net income.

SER Denial for Roof Repairs

The State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by the Department (formerly known as the Department of Human Services) pursuant to MCL 400.10 and Mich Admin Code, R 400.7001-.7049.

In the July 2, 2015, application, Petitioner requested SER assistance with roof repairs. Roof repairs for client-owned housing are non-energy-related repairs. ERM 304 (October 2013), p. 3. To fall within ERM 304, the repair must be (i) essential to remove a direct threat to health or safety or (ii) required by law or a mobile home park regulation, and it must restore the home to a safe, livable condition. ERM 304, p. 3. The lifetime maximum for non-energy-related home repairs is \$1,500 per SER group. ERM 304, p. 3.

A client must obtain at least one estimate of the repair cost, although more may be requested depending on the case circumstances. ERM 304, p. 5. The Department approves the most cost-effective repair. ERM 304, p. 5. However, building repairs costing over \$600 require a licensed contractor. ERM 304, p. 5.

In this case, the Department denied Petitioner's SER application for non-energy-related home repairs because the contractor was not licensed (Exhibit E). Petitioner submitted three estimates to the Department which, according to the evidence provided, were submitted on July 23, 2015, (Exhibit C), after the Department's July 10, 2015, SER Decision (Exhibit E), but there is no evidence that the Department requested estimates prior to July 10, 2015. In his application, Petitioner identified [REDACTED] as one of the contractors that he was considered for roof repairs. At the hearing, the Department verified that [REDACTED] is a licensed contractor for roof repairs. Therefore, Petitioner

identified a licensed contractor in his application. Further, there was no evidence to establish that the lowest bid Petitioner submitted, from [REDACTED], involved an unlicensed contractor. Under the facts in this case, the Department did not act in accordance with Department policy when it denied Petitioner's July 2, 2015; SER application for roof repairs due to the lack of a licensed contractor.

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 denied Petitioner's July 2, 2015, SER application for roof repairs and for FAP benefits.

DECISION AND ORDER

Accordingly, the Department's 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. Reregister and reprocess Petitioner's July 2, 2015, application for SER assistance with roof repairs and FAP benefits;
2. Pay Petitioner's provider for any SER benefits for roof repairs Petitioner is eligible to receive;
3. Issue supplements to Petitioner for any FAP benefits he is eligible to receive but did not from July 2, 2015; ongoing;
4. Notify Petitioner in writing of its decision.



Alice C. Elkin
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Mailed: **10/20/2015**

ACE/jaf

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:

