

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

IN THE MATTER OF:

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████████████████████
████████████████████

MAHS Reg. No.: 15-014881
Issue No.: 3008
Agency Case No.: ██████████
Hearing Date: November 02, 2015
County: Macomb-District 20

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 November 2, 2015, from Detroit, Michigan. Petitioner and her husband, ██████████, represented Petitioner. The Department was represented by ██████████, back-up hearing facilitator.

ISSUE

Did the Department properly calculate Petitioner's Food Assistance Program (FAP) benefits for August 1, 2015 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. Petitioner is an ongoing recipient of FAP benefits.
2. Petitioner has five members in her household: her, her husband, and their three children.
3. Petitioner's husband receives gross monthly Retirement, Survivors and Disability Insurance (RSDI) income of \$554.90, and Petitioner and their children each receive \$60 in monthly RSDI benefits.
4. Petitioner's husband is employed at ██████████.
5. In connection with a redetermination, the Department recalculated Petitioner's FAP benefits.

6. On July 31, 2015, the Department sent Petitioner a Notice of Case Action notifying her that effective August 1, 2015, her FAP benefits were approved for \$274 monthly (Exhibit A, pp. 3-4).
7. On August 20, 2015, Petitioner filed a request for hearing disputing the Department's actions.

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.

Petitioner requested a hearing when, following a redetermination, her monthly FAP benefits decreased from \$375 to \$274 effective August 1, 2015. At the hearing, the Department explained that the decrease was due to an increase in Petitioner's husband's earned income from employment at [REDACTED]. A FAP net income budget for August 1, 2015 ongoing used by the Department in calculating Petitioner's \$274 monthly FAP allotment was reviewed with Petitioner and her husband (Exhibit A, pp. 34-36).

The budget showed gross monthly unearned income of \$794 and gross monthly earned income of \$1525. The Department explained that the unearned income was the sum of Petitioner's monthly \$554.90 RSDI benefits and the each of the remaining household members' monthly \$60 RSDI benefits. This information was consistent with the SOLQs showing the RSDI income each household member received (Exhibit A, pp. 15-30). Because the sum of the household's RSDI income was \$794.90, the Department acted in accordance with Department policy in calculating the household's unearned income.

The Department presented a Bridges printout showing that, in calculating the household's earned income, it considered Petitioner's husband's gross weekly income for the first four weeks of July 2015: July 2, 2015 (\$350.46); July 9, 2015 (\$375.66); July 16, 2015 (\$337.95); and July 24, 2015 (\$360.68) (Exhibit A, pp. 5-6, 15). To determine future months' income, the Department must prospect income using a best estimate of income expected to be received during the month. BEM 505 (July 2015), p. 2. Past

income for the past 30 days is used to prospect income for the further if it appears to accurately reflect what is expected to be received in the benefit month. BEM 505, p. 5. In this case, Petitioner's husband's employment income, as shown on the Work Number printout, showed that, other than for a two-week period he received no pay because of illness, in general Petitioner's husband received about \$350 weekly. Therefore, the Department acted in accordance with Department policy when it prospected the household's future income based on Petitioner's husband's last 30 days of earned income.

Under Department policy, the average weekly total of 30 days' income is multiplied by 4.3 to determine gross monthly pay based on weekly pay. BEM 505, p. 7-8. While the calculation in this case results in income that is slightly more than the gross monthly earned income shown on the FAP net income budget, the Department's calculation of \$1525 of gross monthly earned income benefits Petitioner. Based on gross monthly earned income of \$1525 and gross monthly unearned income of \$794, the FAP budget properly showed total gross monthly income of \$2319.

The deductions to gross monthly income were also reviewed with Petitioner and her husband. The SOLQ shows that Petitioner's husband is over age 60. Therefore, he is a senior/disabled/veteran (SDV) member of his FAP group. See BEM 550 (February 2014), pp 1-2. FAP groups with one SDV member and earned income are eligible for the following deductions from the group's total income:

- Standard deduction based on the group size.
- Dependent care expenses.
- Excess shelter deduction based on monthly shelter expenses and the applicable utility standard.
- Court ordered child support and arrearages paid to non-household members.
- Verified out-of-pocket medical expenses for the SDV member that exceed \$35.
- Earned income deduction equal to 20% of the group's earned income.

BEM 554 (October 2014), p. 1; RFT 255 (October 2014), p. 1.

Petitioner's FAP group has five members and is eligible for a \$192 standard deduction, as shown on the budget. Petitioner and her husband confirmed that they had no day care or child support expenses, as shown on the budget. Based on earned income of \$1525, Petitioner was eligible for an earned income deduction of \$305, as shown on the budget.

Because Petitioner's husband is an SDV member of the FAP group, his allowable out-of-pocket medical expenses over \$35 that are not overdue are valid medical expense deductions to the FAP budget. BEM 554, p. 8. In this case, the FAP budget did not show any medical expense deductions. However, as the Department pointed out at the

hearing, the SOLQ showed that the Social Security Administration withheld \$104.90 from Petitioner's husband's monthly RSDI income to pay for his Part B Medicare premium (Exhibit A, p. 16). Medicare premiums are allowable FAP medical expenses. BEM 554, p. 10. Because the Department had access to this information, it did not act in accordance with Department policy when it failed to include \$70 (the difference between the \$104.90 premium and the \$35 threshold) as a medical expense deduction in Petitioner's FAP budget. The evidence showed that Petitioner had not verified any additional allowable out-of-pocket medical expenses to the Department prior to the hearing.

The final deduction available in calculating FAP benefits is the excess shelter deduction, which is based on (i) monthly shelter expenses and (ii) the applicable utility standard for any utilities the client is responsible to pay. BEM 556, pp. 4-5. Because Petitioner owns her housing, she is eligible for the \$553 mandatory h/u standard, the most favorable utility standard available to a client. BEM 554, pp. 16-20. The Department used \$523.72 as Petitioner's monthly housing expense, which was the expense that had been last verified in May 2014. At the hearing, Petitioner and her husband testified that they paid \$535 in monthly housing. However, there were no changes in housing expenses reported in the redetermination Petitioner submitted to the Department (Exhibit B). Furthermore, Petitioner's FAP budget for the period prior to August 2015 ongoing also showed housing expenses of \$523.72, supporting the Department's position that no changes had been reported prior to the redetermination. Petitioner is advised that she can report and verify any changes to her housing expenses to possibly affect future FAP benefits.

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 calculated Petitioner's FAP benefits when it failed to properly calculate Petitioner's medical expense deduction.

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. Recalculate Petitioner's FAP budget for August 1, 2015 ongoing;
2. Issue supplements to Petitioner for any FAP benefits she was eligible to receive but did not from August 1, 2015 ongoing; and
3. Notify Petitioner in writing of its decision.



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

Date Signed: **11/5/2015**

Date Mailed: **11/5/2015**

ACE / tlf

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: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]