

**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.: 15-015242
Issue No.: 3008
Agency Case No.: [REDACTED]
Hearing Date: November 23, 2015
County: Wayne (55) Hamtramck

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 23, 2015, from Detroit, Michigan. The Petitioner was represented by [REDACTED], the Petitioner's Authorized Hearing Representative (AHR) who also served as the interpreter for Petitioner. The Petitioner, [REDACTED], also appeared. The Department of Health and Human Services (Department) was represented by [REDACTED], Eligibility Specialist.

ISSUE

Did the Department properly calculate the Petitioner's Food Assistance Program (FAP) benefits for August 2015?

FINDINGS OF FACT

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

1. The Petitioner was a resident alien; and on January 27, 2015, the Petitioner and his wife met the 5-year resident alien status making them both eligible to receive FAP benefits, if otherwise eligible.
2. The Petitioner's two children had been receiving \$ [REDACTED] in FAP for a group of two members, because the parents, Petitioner and his [REDACTED], were not eligible to receive benefits so the Petitioner's income was not included in the group income. Exhibit 3.
3. At the July 2015 redetermination, the Petitioner advised the Department of his and his wife's 5-year status and became FAP group members. In addition, the Department began including the Petitioner's income in the FAP group income. Exhibit 1.

4. The Department issued a Notice of Case Action on August 12, 2015, after the redetermination was completed and reduced the Petitioners FAP benefits to \$ [REDACTED]. The Department calculated the August 2015 FAP benefits based upon earned income of \$ [REDACTED], a group size of four members, a heat and utility allowance of \$ [REDACTED] and no rent as no rent was reported on the redetermination. The Department also credited the Petitioner with an earned income deduction and a standard deduction based upon a group size of four of \$ [REDACTED]. Exhibits 1 and 2.
5. The Petitioner requested a timely hearing on August 17, 2015, protesting 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.

In this case, the Department conducted a redetermination in July 2015. The previous FAP budgets did not include the Petitioner and his wife as FAP group members and also did not include the Petitioner's income. Department policy in BEM 550 provides that income of a non-group member is excluded for ineligible persons. The Petitioner and his wife were ineligible for FAP due to their alien status; and thus, per BEM 550 only a pro-rata share of earned and unearned income could be included when calculating FAP benefits. At the time prior to the redetermination, the Petitioner and his wife had no income; thus, no income was used when budgeting the Petitioner's children's FAP benefits. With no income being budgeted, the children received the maximum benefits for a FAP group of two. RFT 260, (October 1, 2015), p. 1. Exhibit 3.

After the redetermination, the Department was advised that the Petitioner had earned income and used five paystubs for June 2015 to determine gross earned income. The pays, which were reported and confirmed at the hearing as correct, were: \$ [REDACTED], \$ [REDACTED], \$ [REDACTED], and \$ [REDACTED]. The Department determined the Petitioner's earned income to be \$ [REDACTED]. Department policy requires that the Department prospect income and determine a standard monthly amount. In recalculating the FAP benefits, the Department must also consider the policy regarding fluctuating income found in BEM 505 because one of the Petitioner's pay was higher significantly by almost \$ [REDACTED] from the next highest check amount and \$ [REDACTED] from the next highest check amount for pays received in June 2015. Policy requires the following under these circumstances:

BEM 505 provides:

Current and Future Months

Prospect income using a best estimate of income expected to be received during the month (or already received). Seek input from the client to establish an estimate, whenever possible.

To prospect income, you will need to know:

- The type of income and the frequency it is received (such as, weekly).
- The day(s) of the week paid.
- The date(s) paid.
- The gross income amount received or expected to be received on each pay date.

Case Management Tip

Prospective budgeting requires knowledge of an individual's current, past and anticipated future circumstances. Asking the client questions, such as those that follow, will help establish the best estimate of future income.

- Do you have multiple jobs?
- When do you expect to receive a raise in pay?
- Do your work hours usually increase or decrease at a certain time of year?
- Have you recently received more or fewer hours than usual due to an unusual situation at work? BEM 505 (July 1, 2015), p. 2-3

Discard a pay from the past 30 days if it is unusual and does not reflect the normal, expected pay amounts. Document which pay is being discarded and why. For example, the client worked overtime for one week and it is not expected to recur. BEM 505, p. 5

In this case, the Department should have discarded the high check, \$ [REDACTED] as it was inordinately high and unusual. Looking at the paystubs provided, the high pay was not reflective of normal expected pay amounts. Thus, the Department should not have included that check when determining earned income. Also, it was not clear from the record whether the Petitioner and the Department had any discussion about the pay

fluctuations at the time of the redetermination, which would have required the check be eliminated as the high check amount would not be expected to continue based upon the information provided at the hearing.

The remainder of the budget was reviewed, and the Department properly credited the FAP group with a heat and electricity allowance of \$ [REDACTED]. The Department also properly included a standard deduction of \$164 based upon a FAP group of four persons. RFT 255 (October 1, 2015) p. 1. Because the Petitioner did not report rent on the redetermination, the Department did not send out a shelter verification, and thus, did not include any rent expense as it was not reported or verified. In addition, due to the inclusion of the high check, the remainder of the FAP budget and the new FAP benefits amount change, if any, cannot be completed as the Department must recalculate the budget and determine if the FAP benefit amount will change based upon a lower income amount.

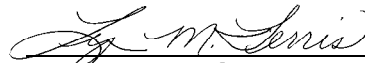
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with Department policy when it calculated the Petitioner's FAP income.

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. The Department shall recalculate the Petitioner's FAP benefits for July 2015 in accordance with Department policy and the determination made in this Hearing Decision to eliminate the high check for July 2015.
2. The Department shall advise the Petitioner of its determination in writing, and shall issue an FAP supplement to the Petitioner, if any, that Petitioner is otherwise entitled to receive in accordance with Department policy.



Lynn M. Ferris

Administrative Law Judge

for Nick Lyon, Director

Department of Health and Human Services

Date Mailed: **11/24/2015**

LMF/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:

