

**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.: 15-017810
Issue No.: 3008
Agency Case No.: ██████████
Hearing Date: December 07, 2015
County: Oakland-District 3
(Southfield)

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, an in-person hearing was held on December 7, 2015, from Southfield, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by ██████████, Hearing Facilitator.

ISSUE

Did the Department properly calculate Petitioner's 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. Petitioner was an ongoing recipient of FAP benefits.
2. Petitioner has two individuals in her FAP group: Petitioner and her adult son.
3. The only income received by Petitioner's household is \$1351 in gross monthly Retirement, Survivors and Disability Insurance (RSDI) income and \$149.50 in gross monthly pension income.
4. On September 12, 2015, the Department sent Petitioner a Notice of Case Action notifying her that her FAP benefits were decreasing to \$109 monthly effective October 1, 2015 (Exhibit A, pp. 7-11).

5. On September 21, 2015, Petitioner filed a request for hearing disputing the Department's actions and alleging that the Department was miscalculating her monthly income.

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 concerning the calculation of her FAP benefits, pointing out in her hearing request that the Department was improperly including child support she did not receive in the calculation of her unearned income. The Department presented FAP net income budgets it had initially used to calculate Petitioner's FAP benefits for September 2015 and October 2015 ongoing (Exhibit A, pp. 3-6), but it acknowledged at the hearing that it had reviewed Petitioner's case following the hearing request and concluded that Petitioner, consistent with statements in her hearing request, had not received any child support in 2015 (Exhibit B). Based on its conclusion that it had improperly included child support in the calculation of her income from the time of her April 27, 2015 application, the Department reprocessed Petitioner's FAP budgets for April 27, 2015 ongoing. The Department presented updated FAP net income budgets for April 27, 2015 to April 30, 2015 (Exhibit C), May 2015 (which represented her circumstances through September 30, 2015) (Exhibit D), and October 1, 2015 ongoing (Exhibit E) to show the FAP amounts Petitioner was eligible to receive once her income was corrected and a benefit summary inquiry (Exhibit G) showing the supplements she would receive for each month between April 2015 and December 2015. Because the Department acknowledged that the error in calculation of Petitioner's income had been ongoing since the date of application, the Department properly recalculated Petitioner's FAP budget from the date of application. BAM 406 (July 2013), p. 3. The information used in the budgets to recalculate Petitioner's FAP benefits was reviewed with Petitioner at the hearing.

The revised budgets showed unearned income of \$1351, which Petitioner acknowledged was her gross monthly Retirement, Survivors and Disability Insurance (RSDI) income. Petitioner testified that she also received gross monthly pension

income of \$149.50. Pension income is countable unearned income for FAP purposes. BEM 503 (July 2015), p. 27. Therefore, although the Department correctly removed the child support from calculation of Petitioner's unearned income, it did not act in accordance with policy when it failed to include the pension income.

The FAP net income budget deductions to gross income were also reviewed with Petitioner. Because Petitioner receives RSDI based on a disability, she is a senior/disabled/veteran (SDV) member of her FAP group. See BEM 550 (July 2015), pp 1-2. FAP groups with two SDV members and no earned income are eligible for deductions from the group's total income for dependent care, excess shelter, child support expenses of the group and verified, monthly out-of-pocket medical expenses that exceed \$35 incurred by the SDV member. BEM 554 (October 2014), p. 1; RFT 255 (October 2014), p. 1. Two-person FAP groups are also eligible for a \$154 standard deduction to income. RFT 255, p. 1.

Petitioner confirmed that neither she nor her son had day care, child support expenses or out-of-pocket medical expenses, as shown on the budgets. The net income budgets show the \$154 standard deduction available to Petitioner's group. The excess shelter deduction is based on (i) monthly shelter expenses, which Petitioner confirmed was \$828, the amount shown on the excess shelter deduction budgets, and (ii) the applicable utility standard for any utilities the client is responsible to pay. BEM 556 (July 2013), pp. 4-5. The excess shelter deduction budgets for April 27, 2015 and for May 2015 (which the Department testified was the same budget through September 30, 2015) showed that Petitioner received the \$553 mandatory heat and utility standard, the most advantageous utility standard available to a FAP client. BEM 554, pp. 14-20; RFT 255, p. 1. The excess shelter deduction was reduced to \$539 pursuant to a change in Department policy effective October 1, 2015, as reflected in the October 1, 2015 ongoing excess shelter budget. The reduced standard is properly applied to the calculation of Petitioner's FAP benefits for October 2015 ongoing.

The evidence presented shows that Department applied the correct information in calculating the deductibles available to Petitioner's income. However, because the incorrect income was used, the Department did not act in accordance with Department policy when it calculated Petitioner's FAP allotment.

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 for April 27, 2015 ongoing.

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 benefits for April 27, 2015 ongoing; and
2. Issue supplements to Petitioner for any FAP benefits she was eligible to receive but did not from April 27, 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: **12/11/2015**

Date Mailed: **12/11/2015**

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]