

**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.: 15-017987
Issue No.: 3008
Agency Case No.: ██████████
Hearing Date: November 23, 2015
County: Wayne-District 15

ADMINISTRATIVE LAW JUDGE: Zainab Baydoun

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. Petitioner appeared for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by ██████████, Eligibility Specialist.

ISSUE

Did the Department properly calculate the amount of 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. On September 12, 2015, the Department sent Petitioner a Notice of Case Action informing her that effective October 1, 2015, her FAP benefits would be decreased to \$328 monthly.
3. On September 24, 2015, Petitioner requested a 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.

In this case, Petitioner requested a hearing disputing the Department's calculation of her FAP benefits in the amount of \$328. At the hearing, the Department stated that Petitioner's benefits were reduced because starting in September 2015 her son's monthly SSI benefits had increased. Petitioner stated that while the Department notified her that her FAP benefits would be reduced effective October 1, 2015, her benefits were actually reduced effective September 2015. Petitioner maintained that she only received \$328 for the month of September 2015. The Department provided the FAP EDG Net Income Results Budget, which was reviewed to determine if the Department properly calculated the amount of Petitioner's FAP benefits. (Exhibit A). It was established at the hearing that the only dispute in this case was the calculation of Petitioner's income, as Petitioner confirmed that all of the other amounts relied on by the Department in the calculation of her FAP benefits were correct.

All countable earned and unearned income available to the client must be considered in determining the Claimant's eligibility for program benefits. BEM 500 (July 2015), pp. 1 – 5. The Department considers the gross amount of money earned from SSI in the calculation of unearned income for purposes of FAP budgeting. BEM 503 (October 2015), pp. 31-32. With respect to reduced benefits due to overpayments, the amount deducted by an issuing agency to recover a previous overpayment or ineligible payment is not part of gross income and will be excluded. BEM 500, p. 5. Additionally, child support is money paid by an absent parent(s) for the living expenses of children and is considered unearned income. The total amount of court-ordered direct support (which is support an individual receives directly from the absent parent or the Michigan State Disbursement Unit (MiSDU)) is counted as unearned income and is considered in the calculation of a client's gross unearned income. BEM 503, pp. 6-9. When prospectively budgeting unearned income from child support, the Department is to use the average of child support payments received in the past three calendar months, unless changes are expected, excluding any unusual amounts or those not expected to continue. BEM 505 (July 2015), pp. 3-4.

The Department concluded that Petitioner had unearned income in the amount of \$1587, which it testified consisted of her son's monthly SSI benefit and child support received for Petitioner's two children. The Department stated that it specifically considered \$733 in SSI benefits and \$420.92 in child support. Petitioner disputed the amounts relied on by the Department and stated that her son only receives \$703 in SSI, as \$30 is deducted from his monthly SSI benefit due to a previous overpayment. The SOLQ presented for review confirms Petitioner's testimony. (Exhibit D). Thus, the Department did not properly calculate Petitioner's unearned income from SSI. With respect to child support, although the Department presented a child support search showing the amount of child support received by Petitioner for the months of June 2015 through November 2015, the Department failed to explain which three months were considered in the child support calculation. Further, it does not appear that the Department took into consideration that no payments were received by Petitioner for the month of July 2015. (Exhibit B). Petitioner disputed the information contained in the child support search presented by the Department and stated that she did not receive the amounts listed. Petitioner provided a bank statement showing the amounts she received in child support. (Exhibit 1). Therefore, based on the evidence presented for review and the above referenced policies, the Department did not properly calculate Petitioner's unearned income.

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 because of the errors in the calculation of Petitioner's unearned income, the Department did not act in accordance with Department policy when it determined that Petitioner was eligible for \$328 in FAP benefits. In light of Petitioner's testimony that her benefits were reduced effective September 1, 2015, the Department shall recalculate the FAP budget effective September 1, 2015.

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 September 1, 2015, ongoing; and
2. Issue FAP supplements to Petitioner from September 1, 2015, ongoing, in accordance with Department policy;



Zainab Baydoun
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **11/30/2015**

Date Mailed: **11/30/2015**

ZB / 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]
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