

**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.: 15-015989
Issue No.: 2000; 3008
Agency Case No.: ██████████
Hearing Date: November 04, 2015
County: Wayne-District 41

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 4, 2015, from Detroit, Michigan. Petitioner and his son, ██████████, represented Petitioner. The Department of Health and Human Services (Department) was represented by ██████████, Hearing Liaison.

ISSUE

Did the Department properly calculate Petitioner's Food Assistance Program (FAP) allotment?

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 August 12, 2015, Petitioner applied for FAP benefits.
2. The Department determined that Petitioner was eligible for \$0 in FAP benefits for the period August 12, 2015 to August 31, 2015; \$357 for September 2015; and \$237 for October 2015 ongoing (Exhibits C, E, and G).
3. On September 4, 2015, Petitioner filed a request for hearing disputing the Department's action concerning his FAP calculation and his Medical Assistance (MA) benefits.

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 concerning the calculation of his FAP amount and his MA case. At the hearing, he testified that he was satisfied with *his* MA case but was concerned about *his children's* MA cases. However, because his request for hearing specifically stated that a hearing was requested for *his* MA case and Petitioner testified that he was satisfied with his MA status, Petitioner's hearing request concerning his MA case is dismissed. Petitioner is advised that he can request a hearing concerning his children's MA in accordance with policy. This Hearing Decision addresses Petitioner's FAP issue.

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.

With respect to the FAP case, the Department's evidence established that Petitioner was denied FAP benefits for August 12, 2015, his application date, to August 31, 2015; was approved for \$357 in FAP benefits for September 2015; and was approved for \$237 in FAP benefits for October 2015 ongoing.

The Department presented three net income budgets which were reviewed with Petitioner and his son at the hearing: (1) for August 12, 2015 to August 31, 2015; (2) for September 2015; and (3) for October 2015 ongoing. The August 2015 and October 2015 budgets showed three eligible FAP group members. The Department explained that Petitioner and his two minor children were qualified FAP group members in August 2015 and October 2015 ongoing but that his wife and his two adult children were disqualified FAP group members in all the budgets based on the fact that they did not have eligible alien status for receipt of FAP benefits.

To receive FAP benefits, a person must be a U.S. citizen or have an acceptable alien status, and individuals who do not meet this requirement are disqualified from FAP eligibility. BEM 225 (October 2014 and October 2015), p. 1. Acceptable alien status includes individuals who are permanent resident aliens and meet one of the following criteria: (i) have been in the U.S. for five years; (ii) meet the Social Security Credits (SSC) requirements; (iii) have permanent residency cards (I-551) with a class code of

RE, AS, SI, AM or SQ; (iv) are under 18 years of age; or (v) are lawfully residing in the United States and disabled. BEM 225, pp. 3-4, 6-7, 9-11.

In this case, there were six members of Petitioner's household: Petitioner, his wife, two adult children, and two minor children. Documentation showing each member's alien status was admitted into evidence (Exhibit A). The permanent residency card for Petitioner showed that he had been in the U.S. since 1996. Therefore, he had acceptable alien status to be a qualified FAP recipient. The permanent residency cards for Petitioner's wife and three of his children showed an October 7, 2013, date of entry into the United States from [REDACTED]. Although there was no permanent residency card for the fourth child because, according to Petitioner, it was returned to the U.S. Customs and Immigration Services for name correction, Petitioner acknowledged that the child had also entered the U.S. on October 7, 2013. Therefore, none of the remaining five household members had resided in the United States for at least five years. Also, none of those household members had a qualifying class code of RE, AS, SI, AM or SQ. However, the two minor children, born May 2, 2005 and September 18, 1999, do meet acceptable alien status for FAP eligibility because they are permanent residents under the age of 18.

There was evidence that Petitioner identified one of his adult children as disabled in his application and he presented additional medical evidence at the hearing to support his claim (Exhibit 1). For FAP purposes, disabled means receiving Supplemental Security Income (SSI), Retirement Survivors and Disability Income (RSDI), Medical Assistance (MA) or Railroad Retirement benefits based on disability or blindness, or being a qualified veteran or qualifying spouse or child of a veteran. BEM 225, pp. 10-11. In this case, there was no evidence that the adult child that Petitioner claimed was disabled received SSI, RSDI, MA or Railroad Retirement benefits based on a disability or that she was a qualified veteran. Therefore, this adult child does not have acceptable alien status for receipt of FAP benefits. Therefore, only three household members, Petitioner and the two minor children, have acceptable alien status for FAP receipt.

August 2015

The Department contended that Petitioner was ineligible for FAP benefits in August 2015 because the household's gross income that month exceeded the gross income limit for FAP eligibility. A FAP group with no senior/disabled/veteran (SDV) members must have income below the gross income limit. BEM 550 (July 2015), p. 1. An SDV FAP group is one where one of the FAP group members (i) is at least 60 years old, or (ii) receives federal, state or local public disability retirement pension and the disability is considered permanent under the Social Security Act **or** Medicaid based on a disability determination by the Disability Determination Service or Social Security Administration **or** Railroad Retirement with Medicare or with meeting Social Security disability criteria; or (iii) receives, or has been certified eligible for, SSI or Social Security benefits based on a disability or blindness. Because none of the members in Petitioner FAP group meet the criteria for SDV, the group had to have gross monthly income at or less than the FAP gross income limit to qualify for FAP. Because there were three qualified

members in Petitioner's FAP group, the gross income limit is \$3300. RFT 250 (October 2014).

The FAP budget for August 2015 was reviewed with Petitioner (Exhibit C). The budget showed gross earned income of \$3307 and gross unearned income of \$724. The Department explained that the unearned income was the unemployment benefits (UB) Petitioner received in the month of August. However, Petitioner denied receiving any earned income in August 2015, and the Department was unable to explain the basis for the earned income. Accordingly, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it calculated Petitioner's income and denied him FAP benefits for August 2015.

September 2015

The September 2015 FAP budget prepared by the Department shows only two qualified FAP members (Exhibit E). Documentation submitted by the Department showed that Petitioner was a mandatory work participant but was disqualified from the FAP group for September 2015 (Exhibit F). For FAP groups who are not receiving Family Independence Program (FIP) benefits, if a member of the group voluntarily quits a job or voluntarily reduces hours of employment without good cause or fails to participate in activities required to receive unemployment benefits (UB) when the client has applied for or is receiving UB, that individual is a disqualified member of the FAP group. BEM 233B (July 2013), pp. 1, 4.

At the hearing, Petitioner testified that his employment was terminated by his employer. The Department did not present any evidence that Petitioner had voluntarily quit his job. The evidence also showed that Petitioner was receiving UB, and there was no evidence that he had failed to participate in any activities necessary to receive UB. Therefore, the Department did not act in accordance with Department policy when it excluded Petitioner as a qualified FAP group member.

The September budget also showed that the household received no income in September 2015. However, at the hearing, the Department testified that Petitioner received UB benefits that month. The Department is required to budget unearned income of qualified group members. BEM 550, pp. 1, 2-5. Therefore, the Department did not act in accordance with Department policy when it did not include Petitioner's UB income in calculating FAP benefits for September 2015.

October 2015 ongoing

The October 2015 ongoing FAP net income budget was presented and reviewed with Petitioner (Exhibit G). The budget shows three qualified FAP group members, which, as discussed above, is correct based on the alien status of the members. The budget shows unearned income totaling \$1556. The Department explained that Petitioner received biweekly UB of \$724 (Exhibit I). Under Department policy, gross biweekly pay is multiplied by 2.15 to determine a gross monthly amount. BEM 505 (July 2015), pp. 7-

8. When \$724 is multiplied by 2.15, the result is \$1556. Therefore, the Department properly calculated Petitioner's gross monthly income.

In determining *net* income, the gross income of the FAP group with no earned income and no SDV members is eligible for the following deductions:

- Standard deduction based on group size.
- Dependent care expense.
- Excess shelter deduction.
- Court ordered child support and arrearages paid to non-household members.

BEM 554 (October 2015), p. 1; RFT 255 (October 2015), p. 1.

Based on a FAP group with three qualified FAP members, the Department properly applied the \$154 standard deduction. RFT 255, p. 1. Petitioner confirmed that he had no child support or dependent care expenses. Therefore, the budget properly showed no deduction for those expenses.

The final deduction available in calculating net income for 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. Petitioner confirmed that his monthly rent was \$700, as shown on the excess shelter deduction budget. (Exhibit G, p. 12; Exhibit J). The budget showed that Petitioner received the heat and utility (h/u) standard, which is the most favorable utility standard available to a client. BEM 554, pp. 14-15. However, effective October 1, 2015, the h/u standard is \$539. RFT 255 (October 2015), p. 1. Therefore, the Department did not act in accordance with Department policy when it used \$553 rather than \$539 as the applicable h/u standard for the October 2015 ongoing excess shelter deduction budget.

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 budget for September 2015 and October 2015 ongoing and failed to satisfy its burden of showing that it acted in accordance with Department policy when it calculated Petitioner's FAP budget for August 2015.

DECISION AND ORDER

Petitioner's September 4, 2015 hearing request concerning his MA case is **DISMISSED**.

The Department's FAP 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 12, 2015 ongoing;
2. Issue supplements to Petitioner for any FAP benefits he was eligible to receive but did not from August 12, 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: **11/10/2015**

Date Mailed: **11/10/2015**

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:

Response	Percentage
Yes, the U.S. should take action to address climate change	95%
No, the U.S. should not take action to address climate change	5%