

**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.: 15-018719
Issue No.: 3001
Agency Case No.: [REDACTED]
Hearing Date: November 30, 2015
County: WAYNE-DISTRICT 55

ADMINISTRATIVE LAW JUDGE: Eric Feldman

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 30, 2015, from Detroit, Michigan. The Petitioner was represented by [REDACTED] (Petitioner). The Department of Health and Human Services (Department) was represented by [REDACTED], Assistant Payment Worker.

ISSUE

Did the Department properly deny Petitioner's Food Assistance Program (FAP) application effective [REDACTED]?

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 [REDACTED], Petitioner applied for FAP benefits.
2. Petitioner's FAP group composition is four and there are no senior/disabled/disabled veteran (SDV) members.
3. Petitioner's spouse receives \$10.25 hourly, she works 40 hours a week, she is paid weekly, and she receives \$15.375 hourly for overtime. See Exhibit A, pp. 15-18.
4. Petitioner receives unemployment compensation, which he began receiving on or around [REDACTED], ongoing. See Exhibit A, pp. 11-13.

5. Petitioner is responsible for both summer and winter property taxes. See Exhibit A, pp. 20-21.
6. On [REDACTED], the Department sent Petitioner a Notice of Case Action notifying him that his FAP application was denied effective [REDACTED], due to excess income. See Exhibit A, pp. 4-5.
7. On [REDACTED] Petitioner filed a hearing request, protesting the Department's action. See Exhibit A, pp. 2-3.

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.

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

Preliminary matters

First, Petitioner argued that he also requested a hearing disputing the MA benefits. However, the undersigned reviewed Petitioner's hearing request and determined that he was only disputing his FAP benefits. See Exhibit A, pp. 2-3. In fact, Petitioner acknowledged that his hearing request disputed only his FAP benefits. As such, the undersigned lacks the jurisdiction to address Petitioner's dispute with the MA benefits. See BAM 600 (April 2015 and October 2015), pp. 1-6. Petitioner can attempt to file another hearing request to dispute the MA benefits. See BAM 600, pp. 1-6.

Second, Petitioner indicated throughout the hearing that he had applied approximately three times for FAP benefits. However, Petitioner acknowledged that he was disputing

the application dated [REDACTED]. As such, the undersigned will only address the [REDACTED] application below.

FAP application

It is not disputed that the group size is four and there are no senior/disabled/disabled veteran (SDV) members.

BEM 556 states that if the income amount exceeds the maximum monthly net income, then deny benefits. See BEM 556 (July 2013), p. 5. Moreover, a non-categorically eligible Senior/Disabled/Veteran (SDV) FAP group must have income below the net income limits. BEM 550 (July 2015), p. 1. A non-categorically eligible, non-SDV FAP group must have income below the gross and net income limits. BEM 550, p. 1. RFT 250 indicates that the monthly net income (100%) limit for a group size of four is \$1,988. RFT 250 (October 2014), p. 1.

At the hearing, the Department presented the September 2015 FAP budget for review. See Exhibit A, pp. 29-30. The Department calculated the spouse's gross earned income to be \$1,797. The Department provided the following pay stubs: (i) pay date on [REDACTED], \$425.84 gross income, 40.00 hours worked and .50 overtime hours; (ii) pay date on [REDACTED], \$418 gross income, 40.00 hours worked and no overtime hours; and (iii) pay date on [REDACTED], \$461.11 gross income, 43.00 hours worked and .75 overtime hours. See Exhibit A, pp. 15-18.

Petitioner did not dispute that his spouse receives \$10.25 hourly, she works 40 hours a week, she is paid weekly, and she receives \$15.375 hourly for overtime. See Exhibit A, pp. 15-18. Petitioner testified that the gross monthly income should have been \$1,672 without the overtime. Petitioner indicated that his wife sometimes worked overtime for the period of August 2015 to September 2015, but stopped working overtime in October 2015.

A group's financial eligibility and monthly benefit amount are determined using: actual income (income that was already received) or prospected income amounts (not received, but expected). BEM 505 (July 2015), p. 1. Only countable income is included in the determination. BEM 505, p. 1. Each source of income is converted to a standard monthly amount, unless a full month's income will not be received. BEM 505, p. 1. The Department converts stable and fluctuating income that is received more often than monthly to a standard monthly amount. BEM 505, p. 7. The Department uses one of the following methods: (i) multiply weekly income by 4.3; (ii) multiply amounts received every two weeks by 2.15; or (iii) add amounts received twice a month. BEM 505, pp. 7-8.

Moreover, the Department determines budgetable income using countable, available income for the benefit month being processed. BEM 505, p. 2. The Department uses actual gross income amounts received for past month benefits, converting to a standard monthly amount, when appropriate. BEM 505, p. 2. Except, the Department can use

prospective income for past month determinations. BEM 505, p. 2. In prospecting income, the Department is required to use income from the past thirty days if it appears to accurately reflect what is expected to be received in the benefit month, discarding any pay if it is unusual and does not reflect the normal, expected pay amounts. BEM 505, p. 5. For example, the client worked overtime for one week and it is not expected to recur. BEM 505, p. 5.

Based on the foregoing information and evidence, the Department failed to satisfy its burden of showing that it properly calculated the gross earned income. The undersigned attempted to review the paystubs submitted and was unable to determine how the Department calculated the gross earned income of \$1,797. For example, when the undersigned takes the three paystubs (including the overtime) and converts it to a standard monthly amount, the result is an approximate gross income of \$1,870. However, when the undersigned considers the spouse's pay of \$10.25 hourly, she works 40 hours a week, she is paid weekly (excluding overtime) and converts it to a standard monthly amount, the result is an approximate gross income of \$1,763. Thus, the undersigned was unable to determine how the Department calculated a gross income of \$1,797. See Exhibit A, p. 29.

Additionally, policy states to discard a pay from the past 30 days if it is unusual and does not reflect the normal, expected pay amounts. BEM 550, p. 5. For example, the client worked overtime for one week and it is not expected to recur. BEM 550, p. 5. The undersigned finds that the Department should discard the spouse's overtime pay because it is unusual and does not reflect the normal, expected pay amounts. See BEM 550, p. 5. Two of the three pay stubs that were included in the evidence packet included minimal overtime hours. See Exhibit A, pp. 15-18. Moreover, Petitioner testified that the overtime pay eventually ended in October 2015. Thus, the Department will recalculate the spouse's earned income and exclude any overtime pay. See BEM 550, pp. 1-7.

Second, the Department calculated Petitioner's gross unearned income to be \$1,167, which comprised of his unemployment compensation. See Exhibit A, pp. 11-13 and 29. Petitioner's unemployment compensation consisted of the following prior to the application date: (i) pay date on [REDACTED], of \$362 gross income; (ii) pay date on [REDACTED], of \$724 gross income; and (iii) pay date on [REDACTED], of \$724 gross income. See Exhibit A, pp. 11-12.

The Department counts the gross amount as unearned income for unemployment benefits. BEM 503 (July 2015), p. 34.

The Department appeared to calculate the \$1,167 gross income by taking the average of the [REDACTED] and [REDACTED] payments and multiplying it by 2.15 to calculate the standard monthly amount. However, the Department's evidence and testimony failed to establish if in fact this is how it was calculated. Moreover, it appears the Department did not include Petitioner's [REDACTED] unemployment compensation payment, which did occur right before the application date. As such, the

Department will also recalculate Petitioner's unearned income in accordance with Department policy. See BEM 503, p. 34 and BEM 505, pp. 1-14.

Also, the Department did properly apply the \$164 standard deduction to Petitioner's group size of four. BEM 550, p. 1 and RFT 255 (October 2014), p. 1. Furthermore, Petitioner would not be eligible for the medical expenses deduction, as no group members fall under the category of SDV. See BEM 554 (October 2014), p. 1 (For groups with one or more SDV members, the Department allows medical expenses that exceed \$35).

Finally, the Department presented the FAP-Excess Shelter Deduction budget (shelter budget) for September 2015. See Exhibit A, p. 31. The Department provided Petitioner with the mandatory heat and utility (h/u) standard of \$553 (see RFT 255, p. 1.), which encompasses all utilities (water, gas, electric, telephone) and is unchanged even if a client's monthly utility expenses exceed the \$553 amount. See BEM 554, pp. 14-15. However, an issue arose as to the calculation of Petitioner's housing expenses. The Department calculated Petitioner's housing expenses to be \$63.71, which consisted of the monthly average of his 2015 summer property taxes that totaled \$764.53. See Exhibit A, pp. 20 and 31. The undersigned finds that the Department properly calculated the average of the summer property taxes (\$764.53 divided by 12 months equals \$63.71). However, Petitioner is also responsible for winter property taxes that the Department failed to consider. See Exhibit A, p. 22.

The Department allows a shelter expense when the FAP group has a shelter expense or contributes to the shelter expense. BEM 554, p. 12. Do not prorate the shelter expense even if the expense is shared. BEM 554, p. 12. Shelter expenses are allowed when billed. BEM 554, p. 12. The expenses do not have to be paid to be allowed. BEM 554, p. 12. Late fees and/or penalties incurred for shelter expenses are not an allowable expense. BEM 554, p. 12. Property taxes, state and local assessments and insurance on the structure are allowable expenses. BEM 554, p. 13.

Based on the above information, the Department failed to include Petitioner's winter taxes as an allowable expense in accordance with Department policy. See BEM 554, pp. 12-13. As such, the Department will recalculate Petitioner's shelter expenses in accordance with Department policy. See BEM 554, pp. 12-13.

DECISION AND ORDER

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it denied Petitioner's FAP application effective [REDACTED].

Accordingly, 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. Initiate re-registration and reprocessing of Petitioner's FAP application dated [REDACTED];
2. Issue supplements to Petitioner for any FAP benefits he was eligible to receive but did not from [REDACTED], ongoing; and
3. Notify Petitioner of its decision.



Eric Feldman
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **12/1/2015**

Date Mailed: **12/1/2015**

EF / hw

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:

