

**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.: 15-020934
Issue No.: 2000; 3001; 3008
Agency Case No.: [REDACTED]
Hearing Date: January 4, 2016
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 January 4, 2016, from Detroit, Michigan. The Petitioner was represented by [REDACTED] (Petitioner); and her ex-husband, [REDACTED]. The Department of Health and Human Services (Department) was represented by [REDACTED], Eligibility Specialist; and [REDACTED], Eligibility Specialist.

ISSUES

Did the Department properly close Petitioner's Food Assistance Program (FAP) benefits from [REDACTED] to [REDACTED]?

Did the Department properly calculate Petitioner's FAP benefits effective [REDACTED], ongoing?

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 or around [REDACTED], the Department worker requested a Front-End Eligibility (FEE) Investigation Report based on the referral reason of income. See Exhibit A, pp. 1 and 33-35.
2. On [REDACTED], Petitioner met with the Office of Inspector General (OIG) Regulation Agent at the local office. See Exhibit A, pp. 33-34.
3. On [REDACTED], the FEE Investigation Report indicated that Petitioner reported that she and her ex-husband reside together and that the ex-husband is

self-employed. See Exhibit A, p. 34. The FEE Investigation Report further indicated that on Petitioner's April 30, 2015 application, she reported her husband (ex-husband) on the application and his business and wages were listed as well. See Exhibit A, p. 34.

4. On or around [REDACTED], the FEE Investigation Report concluded that the work being completed as shown in the photos ([REDACTED]) appears to more extensive, and the value/price per job appears to be more than the Petitioner claims her ex-husband is making per month. See Exhibit A, p. 34. Therefore, the Regulation Agent recommended that the Medical Assistance (MA) and FAP benefits be denied. See Exhibit A, pp. 34-35.
5. On [REDACTED], the Department sent Petitioner a Notice of Case Action notifying her that her FAP benefits would close effective [REDACTED], ongoing because the OIG FEE investigation recommended that the FAP and MA close effectively. See Exhibit A, p. 19. The Notice of Case Action also indicated that the FAP closed effective [REDACTED] because Petitioner requested in writing that her FAP benefits be closed.
6. On [REDACTED], Petitioner reapplied for FAP and MA benefits.
7. On [REDACTED], the Department sent Petitioner a Verification Checklist (VCL), which requested verification of self-employment income, assets, and shelter expense. Exhibit A, p. 20. The verifications were due back by [REDACTED]. Exhibit A, p. 20.
8. Prior to the issuance of the verification dated [REDACTED], the Department received verification of the ex-husband's 2014 income tax return. See Exhibit A, pp. 3-14.
9. The Department indicated that Petitioner failed to provide verification of self-employment income by the VCL due date.
10. On [REDACTED], the Department sent Petitioner a Notice of Case Action notifying her that she was approved for FAP benefits in the amount of \$177 for [REDACTED] to [REDACTED]. See Exhibit A, pp. 21-22. The Notice of Case Action also informed Petitioner that she was approved for FAP benefits in the amount of \$204 for [REDACTED], ongoing. See Exhibit A, pp. 21-22.
11. On [REDACTED], Petitioner filed a hearing request, protesting her FAP and MA case closures and the calculation of her FAP allotment. See Exhibit A, p. 2.

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 matter

On [REDACTED], Petitioner also requested a hearing in which she disputed the closure of her Medical Assistance (MA) benefits. Shortly after commencement of the hearing, it was discovered that Petitioner's MA benefits had been reinstated and that she had no loss of coverage. Petitioner acknowledged that she no longer disputed her MA benefits. As such, Petitioner's MA hearing request is DISMISSED.

FAP closure

First, Petitioner disputed the closure of her FAP benefits effective [REDACTED]. As stated previously, on or around [REDACTED], the Department worker requested a FEE Investigation Report. See Exhibit A, pp. 1 and 33-35.

On [REDACTED], Petitioner met with the Regulation Agent at the local office. See Exhibit A, pp. 33-34.

On [REDACTED], the FEE Investigation Report indicated that Petitioner reported that she and her ex-husband reside together and that the ex-husband is self-employed. See Exhibit A, p. 34. The FEE Investigation Report further indicated that on Petitioner's [REDACTED] application, she reported her husband (ex-husband) on the application and his business and wages were listed as well. See Exhibit A, p. 34.

On or around [REDACTED], the FEE Investigation Report concluded that the work being completed as shown in the photos (Facebook) appears to more extensive,

and the value/price per job appears to be more than the Petitioner claims her ex-husband is making per month. See Exhibit A, p. 34. Therefore, the Regulation Agent recommended that the MA and FAP benefits be denied. See Exhibit A, pp. 34-35.

On [REDACTED], the Department sent Petitioner a Notice of Case Action notifying her that her FAP benefits would close effective [REDACTED], ongoing, because the OIG FEE investigation recommended that the FAP and MA close effectively. See Exhibit A, p. 19. The Notice of Case Action also indicated that the FAP closed effective [REDACTED] because Petitioner requested in writing that her FAP benefits be closed.

Based on the foregoing information and evidence, the undersigned finds that the Department improperly closed Petitioner's FAP benefits effective [REDACTED].

First, the Notice of Case Action dated [REDACTED], indicated that one of the closure reasons for Petitioner's FAP benefits was based on her written request that the FAP benefits be closed. However, Petitioner argued that she never requested in writing that her case be closed.

Policy states that when a recipient is no longer eligible or requests case closure, the Department does all of the following:

- Enter all appropriate information, including verification sources, in Bridges to document ineligibility, or the client's request that the program(s) be closed.
- Run eligibility determination and benefit calculation (EDBC) in Bridges and certify the eligibility results.
- Make appropriate referrals for other programs or services.

BAM 220 (July 2015), p. 19.

In the present case, the evidence fails to establish that Petitioner requested in writing that her case be closed. Instead, the Department argued that Petitioner's case closure was based on the recommendation by OIG, which was notated in the comments section of the Notice of Case Action dated [REDACTED]. See Exhibit A, p. 19. This denial reason will be addressed below. But, as to the second denial reason, the Department failed to satisfy its burden of showing that Petitioner requested in writing that her case be closed. See BAM 220, p. 19.

Second, the undersigned finds that the Department improperly closed Petitioner's FAP benefits based on the FEE Investigation Report recommending case closure. The FEE Investigation Report alleged that the work being completed as shown in the photos (Facebook) appears to more extensive, and the value/price per job appears to be more than the Petitioner claims her ex-husband is making per month. See Exhibit A, p. 34. Therefore, the Regulation Agent recommended case closure. See Exhibit A, pp. 34-35. However, the undersigned finds this to be an improper closure reason. If the allegation

is true that the Petitioner underreported the business's income, then, in order to close Petitioner's FAP benefits, the Department must prove that the business's actual income exceeds the FAP income limits. See BEM 550 (July 2015), p. 1 and BEM 556 (July 2013), p. 5. If Petitioner's income actually exceeds the FAP income limits, then she would be ineligible for benefits due to excess income. See RFT 250 (October 2014 and October 2015), p. 1. But, the Department failed to show any evidence that Petitioner's income exceeded the limits. In fact, Petitioner appears to be income eligible because she subsequently reapplied for FAP benefits on [REDACTED] and was approved. See Exhibit A, p. 21.

As to the allegation that Petitioner underreported the business's income, the undersigned does not find this cause for case closure. Instead, the Department has other remedies of recouping underreported income, if this is in fact true (i.e., recoupment of overissuances). See BAM 715 (July 2014), pp. 1-12. Nevertheless, the undersigned finds that the Department failed to satisfy its burden of showing that it properly closed Petitioner's FAP benefits effective [REDACTED] to [REDACTED], for the above stated reasons. The Department will reinstate Petitioner's FAP benefits and recalculate the budget.

FAP calculation

Second, Petitioner disputed the calculation of her FAP allotment effective [REDACTED] ongoing.

It was not disputed that the certified group size is five and that there are no senior/disabled/disabled veteran (SDV) members. The Department presented the October and November 2015 FAP budgets for review. See Exhibit A, pp. 28-32.

First, the Department calculated the self-employment income to be \$2,604. See Exhibit A, pp. 28 and 31. On [REDACTED], the Department sent Petitioner a VCL, which requested verification of self-employment income, assets, and shelter expense. Exhibit A, p. 20. The verifications were due back by [REDACTED]. Exhibit A, p. 20. The Department indicated that Petitioner failed to provide verification of self-employment income by the VCL due date. Thus, the Department calculated the self-employment income by using the ex-husband's 2014 income tax return that it received prior to the issuance of the of the verification dated [REDACTED]. See Exhibit A, pp. 3-14. The Department testified that it used the information from the Schedule C, Profit or Loss From Business, to calculate the self-employment income. Specifically, the Department testified that it took from line 1 of the Schedule C, Profit or Loss From Business, his \$41,682 in gross receipts or sales and divided it by twelve to obtain a monthly amount. See Exhibit A, p. 3. The result is \$3,473.50. Then, the Department testified that it applied the 25 percent of total proceeds deduction from \$3,473.50, which resulted in a self-employment income amount of \$2,604. See Exhibit A, pp. 28 and 31.

In response, the ex-husband argued that the Department improperly calculated the self-employment income. Instead, the ex-husband argued that the Department should have

used his adjusted gross income of \$18,580 from his 1040, U.S. Individual Income Tax Return from 2014 and divide that amount by twelve. See Exhibit 1, p. 2. It should be noted that Petitioner argued that they did respond to the VCL request dated [REDACTED] and provided verification of the self-employment income on the same day. Specifically, the Petitioner indicated that they provided verification of the Self-Employment Income and Expense Statement for the month of October 2015, no receipts included. See Exhibit 1, p. 3. This verification indicated that the total income for October 2015 was \$830. See Exhibit 1, p. 3.

Individuals who run their own businesses are self-employed. BEM 502 (October 2015), p. 1. This includes but is not limited to selling goods, farming, providing direct services, and operating a facility that provides services such as adult foster care home or room and board. BEM 502, p. 1. Note, S-Corporations and Limited Liability Companies (LLCs) are not self-employment. BEM 502, p. 1.

The amount of self-employment income before any deductions is called total proceeds. BEM 502, p. 3. Countable income from self-employment equals the total proceeds minus allowable expenses of producing the income. BEM 502, p. 3. If allowable expenses exceed the total proceeds, the amount of the loss cannot offset any other income except for farm loss amounts. BEM 502, p. 3.

Allowable expenses (except MAGI related MA) are the higher of 25 percent of the total proceeds, or actual expenses if the client chooses to claim and verify the expenses. BEM 502, p. 3.

Allowable expenses include all of the following:

- Identifiable expenses of labor, stock, raw material, seed, fertilizer, etc.
- Interest and principal on loans for equipment, real estate or income-producing property.
- Insurance premiums on loans for equipment, real estate and other income-producing property.
- Taxes paid on income-producing property.
- Transportation costs while on the job (example: fuel).
- Purchase of capital equipment.
- A child care provider's cost of meals for children. Do not allow costs for the provider's own children.
- Any other identifiable expense of producing self-employment income except those listed below.

Note: Allowable expenses for rental/room and board are different than those listed above.

BEM 502, pp. 3-4.

The following self-employment expenses are not allowed:

- A net loss from a previous period.
- Federal, state and local income taxes.
- Personal entertainment or other individual business expenses.
- Money set aside for retirement.
- Depreciation on equipment, real estate or other capital investments.

BEM 502, p. 4.

Applying the above standards, Petitioner's total self-employment income before any deductions is \$41,682, which the Department first properly determined. See Exhibit A, p. 3. However, after this point forward, the Department miscalculated Petitioner's self-employment income. Yes, policy does state that allowable expenses (except MAGI related MA) are the higher of 25 percent of the total proceeds, or actual expenses if the client chooses to claim and verify the expenses. BEM 502, p. 3. In this case, the Department chose to take the 25 percent deduction of the total proceeds rather than the actual expenses when determining the self-employment income. Policy further states that in order to apply actual expenses the client must choose to claim and verify these expenses. See BEM 502, p. 3. A review, though, of Petitioner's Schedule C, Profit or Loss From Business, does provide the actual expenses that the Department could have used rather than the 25 percent deduction. A review of the income tax return form found that Petitioner had approximately five actual expenses that would possibly qualify as an allowable expense. See Exhibit A, p. 3.

For example, the first deduction found in the tax statement is the cost of goods sold in the amount \$10,254. See Exhibit A, pp. 3-4. At first glance, this amount is found to be an allowable expense because allowable expenses include identifiable expenses of labor, stock, raw material, seed, fertilizer, etc. or any other identifiable expense of producing self-employment income except those listed in BEM 502, pp. 3-4. The other deductions were as follows: (i) advertising in the amount of \$130; (ii) contract labor in the amount of \$10,250; (iii) legal and professional services in the amount of \$375; and (v) cell phone expenses in the amount of \$680. See Exhibit A, pp. 3-4. A review of these additional deductions also appear that they qualify as allowable expenses based on the same reasoning applied to Petitioner's first deduction for costs of goods sold. See BEM 502, pp. 3-4. As such, the Department needs to go back and recalculate the self-employment income by taking the business total proceeds minus the allowable expenses, which consists of Petitioner's actual expenses as identified in the Schedule C, Profit or Loss From Business. See BEM 502, pp. 3-4 and Exhibit A, pp. 3-4.

Additionally, policy states that the primary source of verification for self-employment income is the income tax return. See BEM 502, p. 7. However, policy also states that a secondary source for self-employment income can be the DHS-431, Self-Employment Statement, with all income receipts to support claimed income or a third source being the DHS-431, Self-Employment Statement, without receipts. See BEM 502, p. 7.

As stated previously, the Department indicated that Petitioner failed to provide verification of self-employment income by the VCL due date. However, Petitioner

provided credible evidence that she did provide verification of the self-employment income by the due date. To support Petitioner's claim, Petitioner provided as evidence the Self-Employment Income and Expense Statement for the month of October 2015, no receipts included, that she claimed she submitted in October 2015. See Exhibit 1, p. 3. Based on this evidence, the undersigned finds that Petitioner did provide verification of self-employment income by the VCL due date. This being so, the Department could have also calculated the self-employment income by using the DHS-431, Self-Employment Statement, without receipts, rather than the income tax return. See BEM 502, p. 7. (Third source - DHS-431, Self-Employment Statement, without receipts).

In summary, the Department will recalculate the self-employment income by using 2014 income tax return and/or using the DHS-431, Self-Employment Statement, in accordance with Department policy. See BEM 502, pp. 1-7.

Next, the Department applied the correct \$196 standard deduction applicable to Petitioner's group size of five. See Exhibit A, pp. 28 and 31 and RFT 255 (October 2015), p. 1.

Finally, the Department failed to provide Petitioner's FAP – Excess Shelter Deduction budget as part of the evidence record, which shows such important calculations as her monthly housing expenses and whether she qualified for the mandatory heat and utility (h/u) standard. But, a review of the evidence packet found Petitioner's Notice of Case Action dated [REDACTED], did provide such calculations that the undersigned sought. See Exhibit A, pp. 21-22. The Budget Summary in the Notice of Case Action indicated that Petitioner's monthly housing expense is \$350, which she did not dispute. See Exhibit A, p. 22. However, the Department did not provide Petitioner with the \$539 mandatory h/u standard, which encompasses all utilities (water, gas, electric, telephone) and is unchanged even if a client's monthly utility expenses exceed the \$539 amount. See Exhibit A, p. 22; BEM 554 (October 2015), pp. 14-15; and RFT 255, p. 1. The Department testified during the hearing that Petitioner qualified for the mandatory h/u standard and that it retroactively went back and applied the \$539 effective October 2015. The undersigned, though, does not have any evidence that the Department applied the mandatory h/u standard effective October 2015. As such, the Department will recalculate and provide Petitioner with the mandatory h/u standard effective October 2015 (if not already completed).

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 (i) the Department did not act in accordance with Department policy when it improperly closed Petitioner's FAP benefits effective [REDACTED]; and (ii) the Department did not act in accordance with Department policy when it improperly calculated Petitioner's FAP allotment 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. Reinstate Petitioner's FAP case as of [REDACTED];
2. Recalculate the FAP budget for [REDACTED], ongoing, including the self-employment income;
3. Apply the mandatory heat and utility standard effective October 2015 (if not already completed);
4. Issue supplements to Petitioner for any FAP benefits she was eligible to receive but did not from [REDACTED], ongoing; and
5. Notify Petitioner of its decision.

IT IS ALSO ORDERED that Petitioner's **MA** hearing request is **DISMISSED**.



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

Date Signed: **1/5/2016**

Date Mailed: **1/5/2016**

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:

