



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

MIKE ZIMMER
DIRECTOR

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Date Mailed: March 8, 2016
MAHS Docket No.: 15-024294
Agency No.: ██████████

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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 February 29, 2016, from Detroit, Michigan. Petitioner appeared 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 is the only member of her FAP group and has employment income.
3. Petitioner is ██████ years old.
4. On September 18, 2015, the Department notified Petitioner that she was approved for \$194 in FAP benefits for August 2015 and \$16 in monthly FAP benefits for September 1, 2015 ongoing.

5. On December 29, 2015, the Department received Petitioner's written request for hearing disputing the Department's actions concerning her FAP and Medicaid (MA) cases.

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 her FAP and MA cases. At the hearing, she testified that her MA case had been closed but, prior to the hearing, it had been reinstated with no interruption in benefits. As a result, she did not wish to pursue a hearing concerning the MA issue. The hearing proceeded to address the FAP issues.

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 testified that she was concerned about the amount of her FAP benefits as well as the closure of her FAP case. With respect to the FAP case closure, the Department explained that it sent Petitioner a Notice of Case Action on February 1, 2016 informing her that her FAP case was closing effective March 1, 2016. Because the Department notified Petitioner of the closure of her FAP case on February 1, 2016, the FAP closure was not a negative action by the Department at the time Petitioner filed her December 29, 2015 request for hearing. Therefore, the issue of the FAP closure was not properly presented for hearing and is not considered in this Hearing Decision. See BAM 600 (October 2015), p. 4.

Concerning Petitioner's FAP amount, the Department testified that Petitioner's monthly FAP benefits were reduced to \$16 beginning September 1, 2015, and Petitioner was notified of this reduction in FAP benefits in a September 18, 2015 Notice of Case Action. Because Petitioner's request for hearing concerning the calculation of her FAP benefits was filed on December 29, 2015, more than 90 days after Petitioner received the September 18, 2015 notice of case action notifying her of the decrease in her FAP benefits to \$16 monthly, the issue of the calculation of Petitioner's FAP benefits is limited to her *current* level of benefits as of December 2015, when she filed her hearing request. See BAM 600 (October 2015), pp. 6.

The Department did not present any evidence in its hearing packet concerning Petitioner's FAP benefits but was asked about the information used to calculate the December 2015 FAP budget. The Department testified that it budgeted \$1401 in gross monthly earned income and reduced this income by the following deductions: the standard deduction of \$154 for a FAP group size of one and an excess shelter deduction based on \$500 in monthly housing expenses, a \$119 non-heat electric standard and a \$33 telephone standard.

In calculating monthly FAP benefits, the Department begins with the FAP household's gross income. In this case, in explaining the basis for the \$1401 in gross monthly earned income, the Department testified that \$796 was attributable to Petitioner's employment at [REDACTED]. However, the Department was unable to explain what the remaining income was attributable to. Therefore, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it calculated gross income. See BEM 501 (July 2015), pp. 5-6.

Because Petitioner is over age [REDACTED], she is a senior/disabled/veteran (SDV) member of her FAP group. See BEM 550 (October 2015), p. 1. In determining net income for a one-person FAP household with earned income and an SDV member, the Department must reduce the household's gross monthly unearned income by the following deductions: the earned income deduction (which is 20% of the household's gross monthly earned income), the standard deduction (based on group size), child care expenses, child support expenses, verified medical expenses in excess of \$35, and excess shelter expenses (based on monthly shelter costs and the applicable utility standard). BEM 554 (October 2015), p. 1; BEM 556 (July 2013), p. 3.

Because the Department was unable to explain the basis for the earned income, it failed to satisfy its burden of showing that it properly calculated Petitioner's earned income deduction. The Department testified that it applied the \$154 standard deduction, which is the standard deduction applicable to a one-person FAP group. RFT 255 (October 2015), p. 1. Petitioner acknowledged that she had no child care, child support, or medical expenses; therefore, the Department properly did not apply any deduction for those expenses.

The final deduction available to a client in the calculation of net income is the excess shelter deduction. The excess shelter deduction is based on a client's monthly shelter expenses and the applicable utility standard for any utilities the client is responsible to pay. BEM 556, pp. 4-5.

In this case, Petitioner confirmed that her monthly rent was \$500, consistent with the Department's testimony. The utility standard that applies to a client's case is dependent on the client's circumstances. A client is eligible for the mandatory heat and utility (h/u) standard, the most advantageous utility standard available to a client, if (i) the client is responsible for, or contributes towards, heating or cooling (including room air conditioner) expenses, (ii) the landlord bills the client for excess heating or cooling; (iii)

the client has received a home heating credit (HHC) in an amount greater than \$20 in the application month or in the immediately preceding 12 months prior to the certification month at the time of redetermination; (iv) the client received a low income home energy assistance payment (LIHEAP) payment or a LIHEAP payment was made on their behalf in an amount greater than \$20 in the certification month or in the immediately preceding 12 months prior to the certification month; or (v) the client otherwise has **any** responsibility for the heating/cooling expense. BEM 554, pp. 14-20; RFT 255 (October 2015), p. 1. The client may be eligible for mandatory *individual* standards for non-heat electric, water and/or sewer, telephone, cooking fuel, and/or trash removal, as applicable, **only if** the client is not eligible for the mandatory h/u standard. BEM 554, pp. 20-23.

At the hearing, Petitioner testified that she had a room air conditioner. FAP groups who pay for cooling (including room air conditioners) are eligible for the \$539 h/u standard if they verify they have the responsibility to pay for non-heat electric. BEM 554, p. 17. The Department acknowledged that Petitioner was responsible for non-heat electric expenses and could not establish that it had asked Petitioner whether she had a room air conditioner or that Petitioner had denied having a room air conditioner. In light of Petitioner's testimony that she had a room air conditioner and the Department's acknowledgement that Petitioner had verified her responsibility for non-heat electricity, the Department did not act in accordance with Department policy when it determined that Petitioner was not eligible for the \$539 mandatory h/u standard and, consequently, when it calculated her excess shelter deduction.

Because of the aforementioned issues concerning Petitioner's FAP 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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it calculated Petitioner's FAP benefits for December 2015 ongoing.

DECISION AND ORDER

Because Petitioner acknowledges that her MA issue has been resolved, Petitioner's December 29, 2015 hearing request concerning the MA issue 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 December 2015 ongoing;
2. Issue supplements to Petitioner for FAP benefits she was eligible to receive but did not from December 1, 2015 ongoing; and
3. Notify Petitioner in writing of its decision.



ACE/tlf

Alice C. Elkin
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; 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

DHHS

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

CC:

[REDACTED]
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