

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

IN THE MATTER OF:



MAHS Reg. No.: 15-022369
Issue No.: 3008, 2000
Agency Case No.: [REDACTED]
Hearing Date: January 20, 2016
County: Wayne (57) Conner

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 20, 2016, from Detroit, Michigan. The Petitioner was represented by the Petitioner, [REDACTED]. The Department of Health and Human Services (Department) was represented by [REDACTED], Family Independence Specialist.

ISSUE

1. Did the Department properly calculate the Petitioner's Food Assistance Program (FAP) benefits for September through November 2015?
2. Did the Department properly determine the Petitioner's Medical Assistance (MA) Eligibility?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. At the hearing, the Department presented evidence that established that the MA issue had been fully resolved, which no longer required resolution at the hearing with no issue remaining to be resolved.
2. The Petitioner is an ongoing FAP recipient and seeks a determination as to whether her FAP benefit allotment was correctly determined for the months of September, October and November 2015.

3. The Department requested a Verification of Employment dated August 28, 2015, with a due date of September 8, 2015. The form was sent to the Department by Petitioner's employer on September 25, 2015. Exhibit 1.
4. The Department issued a Verification Checklist (VCL) on August 10, 2015, requesting wages and earnings for the previous 30 days and proof of heat expense, current lease, current bank account information and proof of non heat electricity expense. Exhibit 3.
5. The Department issued a Notice of Case Action dated November 17, 2015, approving the Petitioner for FAP benefits in September 2015 in the amount of \$ [REDACTED] October 2015 in the amount of \$ [REDACTED] and in the month of November 2015 in the amount of \$ [REDACTED]. Exhibit 2 and Exhibit 9.
6. The Petitioner provided a Rental Agreement to the Department verifying shelter expenses of \$ [REDACTED] on October 2, 2015. Exhibit 9 A.
7. The Petitioner requested a timely hearing on November 30, 2015, protesting the Department's determination(s).

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.

In this case, the Petitioner acknowledged at the hearing that there no longer remained any issue with regard to her hearing request regarding MA; thus, there is no issue remaining to be determined by the undersigned.

The Petitioner questioned the Department's determination of the amount of her FAP benefit for September 2015 through November 2015, as her FAP benefits kept fluctuating. The FAP budgets for those months were reviewed at the hearing. The verification of rent was not received by the Department until October 2, 2015; and thus, the Department did not include rent in the September 2015 FAP budget; but rent was included in October and November 2015 FAP budgets

All countable earned and unearned income available to the client must be considered in determining the Petitioner's eligibility for program benefits. BEM 500 (July 2014), pp. 1 – 4. The Department considers the gross amount of money earned from employment in the calculation of earned income for purposes of FAP budgeting. BEM 503 (July 2014), pp. 31-32.

The deductions to income on the net income budget were also reviewed. Petitioner's FAP group consists of three members. BEM 550 (February 2014), pp. 1-2.

- Dependent care expense.
- Excess shelter.
- Court ordered child support and arrearages paid to non-household members.
- Standard deduction based on group size.
- An earned income deduction equal to 20% of any earned income.

BEM 554 (October 2014), p. 1; BEM 556 (July 2013), p. 3.

The budget for September 2015 used income of \$ [REDACTED] for a group of three persons. The Department used pay stubs from August in the amounts of \$ [REDACTED] and \$ [REDACTED]. The total gross income was \$ [REDACTED]. In calculating adjusted gross income, the Petitioner is entitled to a standard deduction of \$ [REDACTED] based upon a group size of three. RFT 255 (October 2014), p. 1. Earned income is also reduced by 20 percent as the Department is required to credit earnings with an earned income deduction.

The Petitioner is paid bi weekly. Department policies found in BEM 505 require that the average weekly or biweekly checks be determined by adding the checks together and dividing by number of checks. Once this amount is determined, it is either multiplied by 2.15, if the checks are earned biweekly, or 4.3 if the checks are earned weekly. Applying this formula is the appropriate way to determine gross earned income. BEM 505 (January 1, 2014) p. 1. Thereafter, 80 percent of the total income is used in calculating total group earned income. In this case, the total gross income of \$ [REDACTED] is divided by 2 and multiplied by 2.15, which totals \$ [REDACTED] ($\$ [REDACTED] \div 2 = \$ [REDACTED]$ X 2.15 = \$ [REDACTED]). The Earned income deduction of \$ [REDACTED] is correct leaving Post earned income of \$ [REDACTED]. Once the \$ [REDACTED] allowance is deducted, the adjusted gross income is \$ [REDACTED]. Thus, based upon a group of three people, the Department correctly calculated the September 2015 FAP benefits to be \$ [REDACTED]. The Department correctly did not include rent or utility allowance as none was verified until October 2, 2015.

The Department determined the October 2015 FAP benefits to be \$ [REDACTED]. The earned income used by the Department was \$ [REDACTED]. Exhibit 9. The Department testified at the hearing that it used two pay stubs for September 2015 in the amounts of \$ [REDACTED] and \$ [REDACTED] for a total of \$ [REDACTED]. The total earned income applying Department policy is \$ [REDACTED] ($\$ [REDACTED] \div 2 = \$ [REDACTED] \times 2.15 = \$ [REDACTED]$). The earned income credit to be deducted should have been \$ [REDACTED] (20% of \$ [REDACTED]) and a standard deduction from the Petitioner's income of \$ [REDACTED] for a group of three persons. Once these deductions are made, the adjusted gross income is \$ [REDACTED] ($\$ [REDACTED] - \$ [REDACTED] - \$ [REDACTED] = \$ [REDACTED]$). The Department determined adjusted gross income of \$ [REDACTED]. The Department did not correctly calculate the income; and thus, the budget for October 2015 must be recalculated.

The excess Shelter calculation was requested. The Department did testify that it used rent of \$ [REDACTED] and gave the Petitioner a Heat and Utility allowance of \$ [REDACTED] for October 2015 and November 2015, which is in accordance with Department policy. Exhibit 9. The excess shelter is determined by adding rent and the heat and utility allowance together to get total housing expense. RFT 255, (October 1, 2015), p.1. The next step is to deduct one half of the adjusted gross income from the housing expenses. The excess shelter expense is then deducted from the adjusted gross income to get net income, which in this case was not determined correctly as the income calculation is wrong. The FAP benefit amount is determined once correct net income is calculated. RFT 260 (October 1, 2015), p .6.

For the November 2015 FAP budget, the Department used gross earned income of \$ [REDACTED]. The Department testified that it used the October 2015 pay stubs in the amounts of \$ [REDACTED] and \$ [REDACTED] which total \$ [REDACTED]. Based upon these pay stubs, the net earned income should have been ($\$ [REDACTED] \div 2 = \$ [REDACTED] \times 2.15 = \$ [REDACTED]$). The total net earned income, thus, was improperly calculated; and thus, the Department must recalculate the November 2015 FAP benefits.

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 the Petitioner's October and November FAP benefits. The Department did correctly calculate the September 2015 FAP benefits.

DECISION AND ORDER

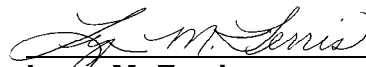
Accordingly, the Department's decision is

AFFIRMED IN PART with respect to calculation of September FAP benefits in the amount of \$ [REDACTED] and **REVERSED IN PART** with respect to its calculation and determination of the October 2015 and November 2015 FAP benefit amounts.

The Petitioner's hearing request dated November 30, 2015, for a hearing regarding her MA is hereby **DISMISSED. IT IS SO ORDERED.**

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. The Department shall recalculate the Petitioner's FAP benefits for October and November 2015 in accordance with Department policy and this Hearing Decision.
2. The Department shall issue the Petitioner, a FAP supplement, if the Petitioner is eligible in accordance with Department policy based upon the re calculation ordered herein.



Lynn M. Ferris

Administrative Law Judge

for Nick Lyon, Director

Department of Health and Human Services

Date Mailed: **1/22/2016**

LMF/jaf

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:

