

**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.: 15-018526
Issue No.: 3008
Agency Case No.: ██████████
Hearing Date: January 11, 2016
County: Wayne-District 15
(Greydale)

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, an in-person hearing was held on January 11, 2016, from Detroit, Michigan. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by ██████████, Success Coach.

ISSUE

Did the Department properly calculate Petitioner's Food Assistance Program (FAP) benefits for October 1, 2015 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. Petitioner was an ongoing recipient of FAP benefits.
2. Petitioner has four members in her household: herself and her three minor children.
3. Petitioner is employed.
4. When the Department became aware that Petitioner's employment income was not being included in the calculation of her FAP benefits, it recalculated the benefits.
5. On October 1, 2015, the Department notified Petitioner that effective October 1, 2015, her FAP benefits decreased to \$190 monthly.

6. October 12, 2015, Petitioner filed a request for hearing disputing the calculation of her FAP 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).

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 disputed the reduction of her monthly FAP benefits from \$649 to \$190 effective October 1, 2015. At the hearing, the Department testified that Petitioner had been employed since late February 2015 but that no employment income was included in the calculation of her monthly FAP benefits prior to October 2015. The Department presented FAP net income budgets showing that for May 2015 to September 2015, Petitioner's FAP benefits were based on Petitioner having no earned income although employment verification retrieved from the Work Number, an electronic database accessible by the Department showing employment information provided by participating employers, showed that she was employed during this time (Exhibits A and D). The Department worker explained that, once she became aware that Petitioner's FAP benefit calculation did not consider her earned income, she recalculated FAP benefit eligibility for October 1, 2015 ongoing. On October 1, 2015, the Department sent Petitioner a Notice of Case Action notifying her that effective that same day, her FAP benefits decreased to \$190 monthly.

It is first noted that notice to Petitioner of the decrease in her FAP benefits was not timely. A decrease in FAP benefits is a negative action requiring timely notice. BAM 220 (October 2015), pp. 2-5. Timely notice is notice mailed at least 11 days before the intended negative action takes effect, during which time the action is pended in order to provide the client with an opportunity to react to the proposed action. BAM 220, p. 4.

In this case, the Department sent Petitioner an October 1, 2015 Notice of Case Action advising her that her FAP benefits were decreasing to \$190. In order to provide timely notice of the FAP decrease, the notice sent on October 1, 2015, would require that the decrease be effective November 1, 2015. Therefore, the Department did not act in accordance with Department policy when it failed to provide Petitioner with timely notice

of the decrease in FAP benefits and made the change effective October 2015 rather than November 2015.

With respect to the calculation of ongoing FAP benefits, the Department presented a FAP net income budget that was reviewed with Petitioner at the hearing. The calculation of monthly FAP benefits is based on a client's household's net income, which is the household's gross monthly income less allowable deductions. BEM 556 (July 2013), pp. 1-7. The budget showed \$2123 in earned income. Although the Department testified was based on Petitioner's gross monthly income in August 2015, a review of the income information from the Work Number (Exhibit A) shows that the Department actually considered Petitioner's September 2015 income.

At the hearing, Petitioner argued that her employment income fluctuated and that she did not always receive overtime reflected in the income considered by the Department. To determine future months' income, the Department must prospect income using a best estimate of income expected to be received during the month. BEM 505 (July 2015), p. 2. Past income for the past 30 days is used to prospect income for the future if it appears to accurately reflect what is expected to be received in the benefit month. BEM 505, p. 5. If the past 30 days is not a good indicator of future income and fluctuations of income during the past 60 or 90 days appear to accurately reflect the income that is expected to be received in the benefit month, the Department should use income from the past 60 or 90 days. BEM 505, pp. 5-6. An employee's wages include salaries, tips, commissions, and bonuses. BEM 501 (July 2014), p. 6.

In this case, Petitioner's employment income, as shown on the Work Number printout, varied from week to week. Overtime was consistent in the 90 day period prior to October 2015. Based on the information in the Work Number and in the absence of Petitioner notifying the Department of any anticipated changes in her work schedule, the Department could properly conclude that the income for September 2015 reflected future income Petitioner could expect to receive. Petitioner's September 2015 pay was as follows: \$626.66 paid on September 4, 2015; \$447.45 paid on September 11, 2015; \$437.75 paid on September 18, 2015; and \$464.55 paid on September 25, 2015. When the average of Petitioner's weekly pay from September 2015 is multiplied by 4.3, in accordance with Department policy, the result confirms the Department's finding of \$2123 in gross monthly income. See BEM 505, p. 7-8. Petitioner is advised to report any decrease in hours to the Department.

Petitioner confirmed that there were four members of her FAP group, her and her three children, and no one was a senior/disabled/veteran (SDV) member of the group. To arrive at net monthly income, the gross monthly income of a FAP group with no SDV members and earned income is reduced by the following deductions: an earned income deduction equal to 20% of the gross monthly earned income, a standard deduction based on group size, a child support deduction, a dependent care deduction, and an excess shelter deduction up to \$504. BEM 554 (October 2015), p. 1; RFT 255 (October 2015), p. 1; BEM 550 (October 2015), p. 1.

Because Petitioner had a four-member FAP group, she was eligible for a \$167 standard deduction, as shown on the budget. RFT 255, p. 1. Based on \$2123 in gross monthly earned income, Petitioner's earned income deduction was properly calculated at \$425, as shown on the budget. Although Petitioner confirmed that she had no child support expenses, the October 1, 2015 Notice of Case Action informed Petitioner that the Department would pay 95% of her child care expenses. Therefore, the Department was aware that Petitioner would have child care expenses and should have verified those expenses. Because the Department did not consider child care expenses, the Department did not act in accordance with Department policy in calculating FAP benefits.

The final deduction available to Petitioner was the excess shelter deduction, which is based on gross monthly shelter expenses and the utility standard that applies to the client's circumstances. In this case, the October 1, 2015 Notice of Case Action notified Petitioner that the Department used \$650 for monthly housing costs, which Petitioner verified was her monthly rent. The Department applied the \$119 non-heat electric standard, which is the applicable utility standard for non-heat electricity, based on Petitioner's statements that she was responsible for her electric bill. See RFT 255, p. 1.

During the hearing, Petitioner testified that she had a room air conditioner but had not notified the Department of this fact. FAP groups who pay for cooling (including room air conditioners) are eligible for the heat and utility (h/u) standard if they verify they have the responsibility to pay for non-heat electric. BEM 554, p. 16. The h/u standard is \$539. RFT 255, p. 1. Petitioner is advised to notify the Department that she has a room air conditioner and is responsible for cooling expenses. Her verification of responsibility for non-heat electric expenses is sufficient to verify her cooling expense. This information may result in an increase in future 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 decreased Petitioner's FAP benefits effective October 2015 and failed to apply the dependent care expense in determining her November 2015 ongoing FAP benefits.

DECISION AND ORDER

Accordingly, the Department's 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. Supplement Petitioner for October 2015 FAP benefits in the amount of \$649;
2. Recalculate Petitioner's FAP benefits for November 2015 ongoing to include a dependent care deduction;
3. Issue supplements to Petitioner for any FAP benefits she was eligible to receive but did not from November 1, 2015 ongoing; and
4. 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: **1/15/2016**

Date Mailed: **1/15/2016**

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: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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