

**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.: 15-022867
Issue No.: 3008
Agency Case No.: ██████████
Hearing Date: January 25, 2016
County: Wayne-District 19 (Inkster)

ADMINISTRATIVE LAW JUDGE: Zainab Baydoun

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 25, 2016, from Detroit, Michigan. Petitioner appeared for the hearing and represented herself. The Department was represented by ██████████, Hearings Facilitator.

ISSUE

Did the Department properly calculate the amount of 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. On September 12, 2015, the Department sent Petitioner a Notice of Case Action informing her that effective October 1, 2015, her FAP benefits would be decreased to \$138 monthly. (Exhibit A)
3. On December 8, 2015, Petitioner requested a hearing disputing the Department's actions with respect to 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.

In this case, Petitioner requested a hearing to dispute the decrease in her FAP benefits. The Department presented a FAP EDG Net Income Results Budget, which was reviewed to determine if the Department properly calculated the amount of Petitioner's FAP benefits. (Exhibit B).

All countable earned and unearned income available to the client must be considered in determining a client's eligibility for program benefits. BEM 500 (July 2015), pp. 1 – 5. The Department determines a client's eligibility for program benefits based on the client's actual income and/or prospective income. Prospective income is income not yet received but expected. BEM 505 (July 2015), pp. 1-2. In prospecting income, the Department is required to use income from the past 30 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. A standard monthly amount must be determined for each income source used in the budget. BEM 505, p. 7. Income received biweekly is converted to a standard amount by multiplying the average of the biweekly pay amounts by the 2.15 multiplier. BEM 505, pp. 7-8. An employee's wages include salaries, tips, commissions, bonuses, severance pay and flexible benefit funds not used to purchase insurance. The Department counts gross wages in the calculation of earned income. BEM 501 (July 2014), pp. 6-7).

The Department concluded that Petitioner had earned income in the amount of \$1249 which it testified consisted of her wages from [REDACTED] and [REDACTED]s. With respect to Petitioner's earnings from [REDACTED], the Department testified that it relied on the paystubs provided by Petitioner and specifically considered biweekly earnings of \$310.35 paid on January 26, 2015, and verified to the Department on February 3, 2015, and \$277.10 paid on February 9, 2015, and verified to the Department on March 20, 2015. (Exhibit D). With respect to Petitioner's earnings from [REDACTED] [REDACTED] the Department testified that it considered biweekly earnings of \$326 paid on May 2, 2015, and \$248.50 paid on May 16, 2015. The Department stated that it relied on the most recent pay information as reported by Petitioner.

At the hearing, Petitioner stated that she has not been employed with [REDACTED] since June 2015 and that she timely reported her loss of employment to her case worker. Petitioner stated that on June 20, 2015, she obtained a loss of employment letter and dropped it off at the local office to her case worker. Petitioner's assigned case worker was not present for the hearing to refute her testimony. Petitioner testified that in preparation for the hearing and since she had not heard back from her case worker regarding the loss of employment, she obtained a new letter from [REDACTED], which was provided for review at the hearing and which indicates that Petitioner's last day of work was June 17, 2015. (Exhibit 1). Therefore, the Department failed to properly calculate Petitioner's earned income, as she established that she notified the Department of her loss of employment at [REDACTED]

The deductions to income on the budget were also reviewed. Petitioner's group is eligible for the following deductions to income:

- 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 2015), p. 1; BEM 556 (July 2013), p. 3.

In this case, the Department determined that the 20% earned income deduction was \$250, however, in light of the improper calculation of the earned income, the earned income deduction is also incorrect. Based on the confirmed two person group size, the Department properly applied the \$154 standard deduction. RFT 255 (October 2015), p. 1. Petitioner did not have any child support expenses or dependent care expenses; therefore, the budget properly did not include a deduction for child support or dependent care expenses. The Department properly considered the \$539 heat and utility standard in calculating Petitioner's excess shelter deduction and stated that Petitioner had not provided verification of her rental expenses, so no housing costs were considered. Petitioner failed to establish that she reported housing expenses to the Department, thus, they were properly omitted from the excess shelter deduction.

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 because of the errors in the calculation of the Petitioner's earned income, the Department did not act in accordance with Department policy when it calculated the amount of Petitioner's FAP benefits.

Petitioner raised additional concerns at the hearing regarding a request that she asserted she made for replacement food assistance benefits. Petitioner stated that her refrigerator stopped working and that she lost all of her food. Petitioner stated that she contacted her case worker on December 8, 2015, the day she requested a hearing and

informed her case worker that she had a letter from her housing commission indicating that her refrigerator was replaced and that she needed food replacement. The Department stated that Petitioner did not apply for food replacement assistance and did not provide any documentation that a disaster occurred that would warrant foods replacement. Petitioner confirmed that she did not submit a written application or make a written request for assistance. The Department testified that no denial notices were issued to Petitioner concerning a request for food benefit replacement, which Petitioner also confirmed.

Upon further review of Department policy, Petitioner failed to establish that she timely requested food benefit replacement or that the Department denied her food benefit replacement request prior to her hearing request. See BAM 502 (July 2013); BAM 401E (July 2014).

DECISION AND ORDER

Accordingly, the Department's decision with respect to the calculation of Petitioner's FAP benefits calculation 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. Process Petitioner's loss of employment at [REDACTED];
2. Recalculate Petitioner's FAP budget for October 1, 2015, ongoing; and
3. Issue FAP supplements to Petitioner from October 1, 2015, ongoing.



Zainab Baydoun
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **1/29/2016**

Date Mailed: **1/29/2016**

ZB / 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]
[REDACTED]
[REDACTED]