



RICK SNYDER
GOVERNOR

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

MIKE ZIMMER
DIRECTOR

[REDACTED]

Date Mailed: March 1, 2016
MAHS Docket No.: 15-024407
Agency No.: [REDACTED]
Petitioner: [REDACTED]

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 February 2, 2016, from Detroit, Michigan. The Petitioner was represented by the Petitioner, [REDACTED]. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearing Facilitator.

ISSUE

1. Did the Department properly decrease the Petitioner's Food Assistance Program (FAP) benefits?
2. Did the Department properly deny the Petitioner's Child Development and Care (CDC) application?

FINDINGS OF FACT

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

1. The Department issued a Notice of Case Action on December 2, 2015, decreasing Petitioner's FAP benefits to \$ [REDACTED] a month. When calculating benefits, the Department used earned income of \$ [REDACTED] a standard deduction of \$ [REDACTED] for a FAP group of three members, and a telephone standard of \$ [REDACTED]. The Notice indicated as the reason for the change that either the shelter deduction amount has changed because shelter expense has changed or income has changed. Exhibit 1.

2. The Petitioner filed an application for FAP on October 19, 2015, with a new address; and the new rent of \$ [REDACTED] was reported. No verification was sent to the Petitioner to verify rent.
3. On December 16, 2015, the Department denied the Petitioner's December 4, 2015, application for CDC based upon the gross income exceeds the entry limit for CDC as well as that the parent did not have a need for child day care services due to employment.
4. The Petitioner was employed during all relevant periods.
5. The Petitioner completed a redetermination on January 19, 2016, and advised the Department of a change in rent to \$ [REDACTED] with all utilities included. The Department did not send a shelter verification to the Petitioner. The Department removed the Petitioner's prior \$ [REDACTED] rent from her FAP budget as of November 30, 2015.
6. The Department used earned income of \$ [REDACTED] when determining FAP gross earned income for January 2016 FAP benefits. The pay stubs received by the Department were \$ [REDACTED] November 20, 2015, ([REDACTED] hours) and \$ [REDACTED] For November 6, 2015, for \$ [REDACTED] for ([REDACTED] hours). The large check included a bonus, which was included in the FAP budget. The Petitioner is paid biweekly.
7. The Petitioner provided a change of address to the Department online October 3, 2015. The address was changed on December 16, 2015, by the Department. The Petitioner reported the change per the Department's records based upon a new application for CDC filed by Petitioner on December 4, 2015. The Department received returned mail on November 30, 2015. The Petitioner applied for FAP on October 19, 2015, with the new address reported.
8. The Petitioner notified the Department and changed her address online on October 3, 2015, and provided the Department a rent receipt effective October 2015. The Petitioner did not receive the CDC redetermination. The Petitioner completed the CDC redetermination once she received it.
9. The Petitioner requested a timely hearing on January 14, 2016, protesting the Department's actions.

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 Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, 42 USC 601-619, 670-679c, and 1397-1397m-5; the Child Care and Development Block Grant of 1990, PL 101-508, 42 USC 9858 to 9858q; and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193. The program is implemented by 45 CFR 98.1-99.33. The Department administers the program pursuant to MCL 400.10 and provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001-.5020.

Food Assistance Benefits (FAP)

In this case, the Petitioner requested a hearing regarding the reduction of her FAP benefits. The Department calculated the Petitioner's FAP benefits and reduced them effective January 1, 2016. Exhibit 1. The FAP budget did not include rent. The Petitioner's prior rent was \$ [REDACTED] as well as a heat expense of \$ [REDACTED]. The Petitioner reported a change in rent on October 19, 2015, when she filed a new FAP application and provided the Department a new address. The Department never verified the change in rent, but nonetheless, removed the old expense, which was error. Because the Department did not follow Department policy found in BEM 545, the FAP benefits for January 2016 must be recalculated to include the old rent and heat expense until the Department seeks shelter verification of the new housing expenses.

Verify shelter expenses at application and when a change is reported. If the client fails to verify a reported change in shelter, remove the old expense until the new expense is verified.

Verify the expense **and** the amount for housing expenses, property taxes, assessments, insurance and home repairs. BAM 554, (October 2015), p. 11.

A review of the income and how the earned income of \$ [REDACTED] was determined for January benefits was unclear. In addition, the November 2015 income included a bonus amount, which would not continue. The Department made no adjustment for the bonus. The Department did not use the last 30 day checks for the October 2015 FAP application. The Petitioner's FAP never closed. The Department could not determine what checks were used to determine the income. Thus, based upon the evidence provided, the Department failed to demonstrate that it properly calculated the Petitioner's earned income when determining the FAP benefits for January 2016 and failed its burden of proof.

In addition, the Department should have followed the policy found in BEM 505 as regards the determination of income and should not have included the bonus check of \$ [REDACTED] dated November 20, 2015, as it was unusual. Department policy provides:

Using Past Income

Use past income to prospect income for the future unless changes are expected:

- Use income from the **past 30 days** if it appears to accurately reflect what is expected to be received in the benefit month.

Note: The 30-day period used can begin up to 30 days before the interview date or the date the information was requested.

Exception: For FAP only, when processing a semi-annual contact, the 30-day period can begin up to 30 days before the day the DHS-1046, Semi-Annual Contact Report, is received by the client or the date a budget is completed. Any 30-day period that best reflects the client's prospective income within these guidelines can be used.

Discard a pay from the past 30 days if it is unusual and does not reflect the normal, expected pay amounts. Document which pay is being discarded and why. For example, the client worked overtime for one week and it is not expected to recur. BEM 505 (July 1, 2015, p. 5, (emphasis supplied).

Child Development and Care (CDC)

The Department issued a Notice of Case Action on December 16, 2015, denying the Petitioners CDC due to excess income effective December 13, 2015. No budget for CDC was produced. The Petitioner had reapplied for CDC on December 4, 2015. The income used to determine the denial was the last 30 days or November 2015. The income determined by the Department was \$ [REDACTED] for the period of December 13, 2015, through December 26, 2015. The CDC income limit is \$ [REDACTED]. The Department could not explain how the Department came up with \$ [REDACTED]. When completing a CDC budget Department policy provides:

Use the gross (before deductions) countable, monthly income to determine the amount the department will pay towards the group's child care costs.

See BEM 505 for details on when a budget is needed, income and benefit month definitions, and the conversion of income to a monthly figure.

When a Budget is Required

Complete a CDC budget at application and redetermination or when the client reports an increase in income that exceeds the eligibility income scale for the group size; see RFT 270. This amount will be printed on the DHS-1605, Notice of Case Action, at application and redetermination.

Note: In order to enter the CDC program, the family's gross monthly income cannot exceed the \$15.00 flat-rate family contribution for their family group size. Flat-rate family contributions are per child per biweekly pay period. See RFT 270. BEM 525 (January 2016), p. 1.

The Department did not indicate how its determination that the income exceeded the CDC income limit was determined nor was a budget provided; thus, the Department failed to meet its burden of proof to show that it properly denied the CDC application.

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 FAP benefits for January 2016.

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 denied the Petitioner's CDC benefits.

DECISION AND ORDER

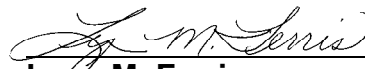
Accordingly, the Department's decision is **REVERSED**.

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. The Department shall recalculate the FAP benefits for January 2016 and shall include \$ [REDACTED] in rent and a heat allowance.

2. The Department shall issue a shelter verification and shall verify the Petitioner's new rent.
3. The Department shall re register the Petitioner's December 4, 2015, CDC application and redetermine eligibility.
4. The Department shall provide a written notice to the Petitioner of its determinations.

LMF/jaf



Lynn M. Ferris
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]

Petitioner

[REDACTED]