

**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.: 16-000135
Issue No.: 3001
Agency Case No.: ██████████
Hearing Date: February 18, 2016
County: Wayne-District 19

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 February 18, 2016, from Detroit, Michigan. Petitioner appeared for the hearing and represented herself. The Department was represented by ██████████, Hearings Facilitator.

ISSUE

Did the Department properly process 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's ongoing FAP eligibility was denied effective October 2015 based on a failure to verify requested information at redetermination. (Exhibit C)
3. On October 22, 2015, Petitioner requested a hearing disputing the closure of her FAP case. (Exhibit C)
4. On December 14, 2015, an administrative hearing was held with respect to the closure of Petitioner's FAP case. (Exhibit C)
5. The Hearing Decision associated with the above referenced administrative hearing was mailed on December 17, 2015, and the Administrative Law Judge (ALJ) found that the Department did not act in accordance with Department policy when it

closed Petitioner's FAP case. The ALJ ordered the Department to initiate certain actions with respect to Petitioner's FAP benefits. (Exhibit C)

6. On December 18, 2015, Petitioner reapplied for FAP benefits.
7. On December 23, 2015, the Department completed an Administrative Hearing Order Certification to show that it complied with the hearing decision. (Exhibit A)
8. On December 23, 2015, the Department sent Petitioner a Notice of Case Action informing her that she was denied FAP benefits effective October 1, 2015, on the basis that the group's gross income exceeds the limit. (Exhibit B)
9. On January 6, 2016, Petitioner requested a hearing disputing 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.

Petitioner requested a hearing on January 6, 2016, disputing the Department's actions with respect to her FAP benefits. At the hearing, Petitioner raised two concerns: the Department's alleged failure to comply with a prior hearing decision and order; and the denial of Petitioner's December 18, 2015, FAP application. It was established at the hearing that Petitioner's December 18, 2015, FAP application was denied and the Department notified Petitioner of the denial by sending her a Notice of Case Action on January 7, 2016. Petitioner confirmed being notified of the application denial after she submitted her hearing request. Therefore, the application denial is considered a subsequent action which requires a new hearing request. The hearing proceeded with respect to the prior hearing decision and order.

Petitioner stated that she had a prior administrative hearing at the conclusion of which the Department was reversed and was ordered to reinstate her FAP case. A review of the prior Hearing Decision indicates that the Department was ordered to begin doing the following within ten days of the date of mailing of the decision and in accordance with

Department policy: (i) Reinstate Petitioner's FAP case effective October 2, 2015; (ii) Issue FAP supplements to Petitioner from October 2, 2015, ongoing; and (iii) Notify Petitioner of its decision in writing. (Exhibit C).

According to BAM 600, the Department is to implement and certify a decision and order within ten calendar days of the mailing date on the hearing decision. BAM 600 (October 2015), pp. 40-42. When a hearing decision requires a case action different from the one originally proposed, a DHS-1843, Administrative Hearing Order Certification is sent with the decision and order. The Department is to complete the necessary case action and send the DHS-1843 to MAHS to certify implementation and place a copy of the form in the case file. BAM 600, p. 42.

At the hearing, the Department testified that it complied with the prior Hearing Decision and Order because it reinstated Petitioner's FAP case and determined that she was ineligible for FAP benefits or any FAP supplement from October 1, 2015, ongoing, due to excess gross income. The Department presented an Administrative Hearing Order Certification (DHS 1843) signed by a Department supervisor on December 23, 2015, March 10, 2015, which the Department testified shows compliance with the hearing decision and order. (Exhibit A). The Department also presented a Notice of Case Action dated December 23, 2015, which it testified informed Petitioner that she was denied continued FAP benefits for October 1, 2015, ongoing on the basis that her gross income exceeded the limit. (Exhibit B).

FAP groups with no senior/disabled/veteran (SDV) members must have income below the gross income limit. BEM 550 (October 2015), p. 1. There are five individuals in Petitioner's FAP group. BEM 212 (October 2015), p. 1. Because none are SDV members, the group's eligibility is subject to the gross income limit. The Department applied a gross income limit of \$3078.

Because all FAP applicants and recipients are eligible for enhanced authorization for Domestic Violence Prevention Services (DVPS), the monthly categorical income limit (200% of the poverty level), from RFT 250, column D (October 2014), p. 1, applies as the standard for FAP gross income eligibility. BEM 213 (July 2014), pp. 1-2. For a five-person FAP group, the applicable 200% gross income limit is \$4736. RFT 250, p. 1. In this case, the Department applied the incorrect gross income limit. RFT (October 2015), p. 1.

The Department presented a FAP Gross Income Test Budget in support of its assertion that Petitioner's gross income of \$5152 was in excess of the gross income limit. (Exhibit D). The Department stated that in calculating Petitioner's gross income of \$5152, it considered her self-employment income and her husband's wages based on his ownership of an LLC.

The Department concluded that Petitioner had self-employment earnings of \$600. The amount of self-employment before any deductions is called total proceeds. Countable

income from self-employment equals (i) the total proceeds of self-employment **minus** (ii) allowable expenses of producing the income, which is the higher of 25 percent of total proceeds or actual expenses if the client chooses to claim and verify the expenses. BEM 502 (October 2015), p. 3.

Self-employment is verified as follows:

Primary source: Income tax return is used provided that (i) the client has not started or ended self-employment, or received an increase/decrease in income, etc., (ii) the tax return is still representative of future income, and (iii) the client filed a tax return.

Secondary source: DHS-431, Self-Employment Statement, with all income receipts to support claimed income.

Third source: DHS-431, Self-Employment Statement, without receipts. When this verification source is used, a Front End Eligibility (FEE) referral is required and the case may not open until the FEE investigation is completed.

BEM 502, p. 7. The Department stated that it relied on the information contained in Petitioner's 2014 Schedule C Form 1040 Profit or Loss from Business on which she reported gross income of [REDACTED]. The Department testified that it divided the income from gross receipts or sales [REDACTED] by 12 and determined that Petitioner had gross monthly self-employment proceeds of [REDACTED]. The Department stated that it determined that Petitioner had allowable expenses of 25% of her total proceeds, resulting in countable income from self-employment in the amount of [REDACTED]. Although the Department testified that Petitioner's monthly self-employment income was \$684, the Gross Income Budget reflects \$600. At the hearing, Petitioner stated that she was paid once a month in amounts varying from \$450 to \$800 with the average being around \$600. Therefore, the income from self-employment determined by the Department was correct as it was confirmed by Petitioner herself.

The Department concluded that Petitioner's group had earned income of [REDACTED] which it testified consisted of Petitioner's husband's wages from his employment as the owner of an LLC. The Schedule C, Profit or Loss from Business, included with Petitioner's Form 1040 shows that the husband's business is a professional limited liability company (LLC). (Exhibit E). While Department policy provides that individuals who run their own businesses are self-employed, it specifically states that LLCs are not self-employment. BEM 502 (October 2015), p. 1. Instead, for FAP purposes, the Department counts the income a client receives from the LLC as wages, even if the client is the owner. BEM 501 (July 2014), p. 4. Wages are the pay an employee receives from another individual organization or S-Corp or LLC. BEM 501, p. 6. They include wages held by the employer at the request of the employee. BEM 501, p. 7.

In this case, the Department testified that Petitioner's husband stated on his tax return that he earned \$ [REDACTED] for the 2014 year. The Department stated that it divided the yearly income by 12 and determined that Petitioner's husband had wages of [REDACTED]. A review of the Schedule C, Profit or Loss from Business relied upon by the Department indicates that the LLC had gross income of [REDACTED]3, prior to deducting any expenses for the business. The Schedule C states that the LLC had a net profit of [REDACTED] (Exhibit E).

The document relied upon by the Department does not contain any information concerning the amount of wages Petitioner's husband earned from the LLC, however. The Department did not present Petitioner's husband's individual tax return which would reflect his earnings and wages from the business he owns. Rather than rely on the [REDACTED]3 gross income of the LLC, the Department was required to verify Petitioner's husband's wages from the LLC, including any income held by the LLC at the husband's request, as the gross income of the LLC is not the equivalent of gross income or gross wages that a client receives from the LLC. Because the Department failed to do so, it did not act in accordance with Department policy when it calculated Petitioner's husband income and determined that Petitioner's group had excess gross income for the FAP.

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 although the Department established that it certified and implemented the prior Hearing Decision and Order, the Department did not act in accordance with Department policy when it subsequently determined that Petitioner was ineligible for FAP benefits on the basis that her gross income exceeded the limit.

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. Reinstate Petitioner's FAP case effective October 1, 2015;
2. Recalculate Petitioner's FAP budget to determine Petitioner's FAP eligibility for October 1, 2015 ongoing;

3. Issue supplements to Petitioner for FAP benefits she was eligible to receive but did not from October 1, 2015 ongoing; and
4. Notify Petitioner in writing of its decision.



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

Date Signed: **2/25/2016**

Date Mailed: **2/25/2016**

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]