

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

IN THE MATTER OF:

██████████
██████████
██████████

MAHS Reg. No.: 16-000138
Issue No.: 3008
Agency Case No.: ██████████
Hearing Date: February 18, 2016
County: Wayne-District 31

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 with his wife, ██████████ and represented himself. The Department was represented by ██████████ Eligibility Specialist

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. On October 27, 2015, Petitioner submitted an application for FAP benefits on behalf of himself, his wife and his three grandchildren for whom he was caring. (Exhibit A, pp.15-22)
2. At the time of Petitioner's application, his three grandchildren were receiving FAP benefits on their mother, ██████████ FAP case.
3. Petitioner was approved for FAP benefits in the amount of \$16 for the month of November 2015 based on a group size of two. (Exhibit B)

4. Petitioner's three grandchildren were removed from [REDACTED]' FAP case effective December 1, 2015, and added to Petitioner's FAP case. (Exhibit A, pp. 25-26; Exhibit C)
5. On November 30, 2015, the Department sent Petitioner a Notice of Case Action informing him that effective December 1, 2015, his grandchildren were added to his FAP group and his FAP benefits increased to \$111 based on a group size of five. (Exhibit A, pp. 25-26)
6. On December 23, 2015, [REDACTED] applied for FAP benefits for herself and her three children, using Petitioner's home address. (Exhibit A, pp. 34-40)
7. Petitioner's daughter, [REDACTED] was subsequently added to Petitioner's FAP case and the Department began budgeting [REDACTED]' income towards Petitioner's FAP budget, which resulted in the group being ineligible for FAP based on excess net income. (Exhibit A, pp. 45-46)
8. On an unverified date, Petitioner's daughter [REDACTED] moved out of Petitioner's home and was removed from Petitioner's FAP case.
9. On January 4, 2016, Petitioner verbally requested a hearing disputing the Department's actions with respect to his FAP case.

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, the Department had taken several actions on Petitioner's FAP case prior to his January 4, 2016, hearing request. It was established that Petitioner requested a hearing to dispute the Department's calculation of his FAP benefits. The eligibility summary and Notices of Case Action indicate that: Petitioner was approved for FAP benefits of \$111 for the months of December 2015 and January 2016; that his benefits decreased to \$103 effective February 1, 2016; and that for the period of March 1, 2016, ongoing, Petitioner was approved for FAP benefits of \$213. (Exhibit A; Exhibit B). It was

further established that at the time of Petitioner's hearing request he had only been notified of his FAP benefits being \$111, therefore, the issue concerning whether the Department properly determined that Petitioner was eligible for FAP benefits in the amount of \$111 for the months of December 2015 and January 2016 was addressed at the hearing. 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 for the period at issue. (Exhibit A, pp. 29-31).

All countable earned and unearned income available to the client and group must be considered in determining a client's eligibility for program benefits. BEM 500 (July 2015 and January 2016), 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 weekly is converted to a standard amount by multiplying the average of the weekly pay amounts by the 4.3 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.

In this case, the Department concluded that Petitioner's group had earned income of \$1181 which it testified consisted of his wife's earnings from employment. Specifically, the Department considered: (i) \$322.74 paid on October 30, 2015; (ii) \$246.95 paid on November 6, 2015; and (iii) \$254.28 paid on November 13, 2015. Petitioner's wife confirmed that the wage information relied on by the Department was correct. Upon further review, the Department properly calculated the earned income.

With respect to unearned income, the Department considers the gross amount of money earned from RSDI in the calculation of unearned income for purposes of FAP budgeting. BEM 503 (October 2015), pp. 28. Additionally, child support is money paid by an absent parent(s) for the living expenses of children and is considered unearned income. The total amount of court-ordered direct support (which is support an individual receives directly from the absent parent or the Michigan State Disbursement Unit (MiSDU)) is counted as unearned income and is considered in the calculation of a client's gross unearned income. When prospectively budgeting unearned income from child support, the Department is to use the average of child support payments received in the past three calendar months, unless changes are expected, excluding any unusual amounts or those not expected to continue. BEM 505, pp. 3-4.

The Department concluded that Petitioner's group had unearned income of \$1450 which it testified consisted of RSDI for Petitioner and child support for his three

grandchildren. Specifically, the Department considered: \$955 in RSDI for Petitioner; child support for Child A of \$286.26 for the month of August 2015, \$201.18 for the month of September 2015, and \$0 for the month of October 2015; child support for Child B in of \$385.12 for the month of August 2015, \$270.67 for the month of September 2015, and \$0 for the month of October 2015; and child support for Child C in the amount of \$203.02 for the month of August 2015, \$143.20 for the month of September 2015, and \$0 for the month of October 2015.

Petitioner confirmed that the RSDI amounts relied on by the Department were correct. Although the Department presented a child support search in support of its testimony to verify that support is paid on behalf of the children, Petitioner disputed the Departments inclusion of child support to his FAP budget. Petitioner stated that although the children are living in his home, he does not receive any child support payments on their behalf and that the money received from child support is paid to the children's mother. A review of the child support search provided establishes that the Payee Name listed is [REDACTED] and not Petitioner. (Exhibit B). Thus, the Department has failed to establish that Petitioner received child support income on behalf of the children in his care. Furthermore, because Petitioner's daughter [REDACTED] was not a member of the FAP group for the December 2015 and January 2016 months at issue, the income should not be counted towards Petitioner's FAP budget.

The deductions to income on the net income budget were also reviewed. Petitioner is a senior/disabled/veteran (SDV) member of the FAP group. BEM 550 (October 2015), pp. 1-2. Groups with one or more SDV members are eligible for the following deductions to income:

- Dependent care expense.
- Excess shelter.
- Court ordered child support and arrearages paid to non-household members.
- Medical expenses for the SDV member(s) that exceed \$35.
- 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 properly determined that the earned income deduction was \$237. There was no evidence presented that he had any out of pocket medical, dependent care or child support expenses. Therefore, the budget properly did not include any deduction for medical expenses, dependent care expenses, child support. Based on her confirmed five-person group size, the Department properly applied the \$196 standard deduction. RFT 255 (October 2015), p. 1. In calculating Petitioner's excess shelter deduction, the Department considered verified housing expenses for Petitioner's insurance premium of \$312.58 and the \$539 standard heat and utility deduction. BEM 554, pp. 16-19; RFT 255, p.1. (Exhibit A).

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 unearned income, the Department did not act in accordance with Department policy when it calculated Petitioner's FAP benefits of \$111.

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. Recalculate Petitioner's FAP budget for December 1, 2015, ongoing;
2. Issue FAP supplements to Petitioner from December 1, 2015, ongoing, in accordance with Department policy; and
3. Notify Petitioner in writing of its decision.



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

Date Signed: **2/24/2016**

Date Mailed: **2/24/2016**

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]