



RICK SNYDER  
GOVERNOR

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

MIKE ZIMMER  
DIRECTOR



Date Mailed: March 1, 2016  
MAHS Docket No.: 16-000276  
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 22, 2016, from Detroit, Michigan. The Petitioner was represented by the Petitioner, [REDACTED]. The Department of Health and Human Services (Department) was represented by [REDACTED], Assistance Payments Supervisor and Hearing Facilitator, and [REDACTED], Family Independence Specialist.

### **ISSUE**

Did the Department properly reduce the 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. The Petitioner was an ongoing recipient of FAP benefits.
2. The Petitioner reported new employment in November 2015 for work at [REDACTED]
3. The Department issued a Notice of Case Action on November 20, 2015, and decreased Petitioner's FAP benefits effective January 1, 2016, ongoing to \$ [REDACTED] Exhibit 2.
4. The Department used monthly gross earned income of \$ [REDACTED] when calculating FAP benefits for January 2016 and unearned income of \$ [REDACTED] and rent of \$ [REDACTED] and

a heat and utility standard of \$ [REDACTED] for the Petitioner's FAP group of three members. The Petitioner is paid weekly. Exhibits 2 and 3.

5. The Petitioner requested a timely hearing on January 12, 2016.

### **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 reduced the Petitioner's FAP benefits as of December 2015 and issued a Notice of Case Action on November 20, 2015, reducing Petitioner's FAP benefits effective January 1, 2016. The Department used the Work Number to determine earned income from employment. Exhibit 1. The wages and hours reported by the Work Number appeared correct and were confirmed as such by the Petitioner. The Petitioner's FAP benefits were reduced by Notice of Case Action effective January 2016, but the Bridges system reduced the Petitioner's benefits for December 2015. At the hearing, the Department conceded that the unearned income was incorrect. It included Family Independence Program (FIP) of \$ [REDACTED] but the Department could not provide the correct Supplemental Security Income (SSI) received by the Petitioner's disabled child to demonstrate that it used the correct amount. As the unearned income as presented was not substantiated and was unclear the FAP budget for January 2016 must be recalculated.

All countable earned and unearned income available to the client must be considered in determining the Petitioner's eligibility for program benefits. BEM 500 (July 2014), pp. 1-4. The Department considers the gross amount of money earned from employment in the calculation of earned income for purposes of FAP budgeting. BEM 503 (July 2014), pp. 31-32.

The deductions to income on the net income budget were also reviewed. Petitioner's FAP group consists of three members. BEM 550 (February 2014), pp. 1-2.

- 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 2014), p. 1; BEM 556 (July 2013), p. 3.

The budget for January 2016 used earned income of \$ [REDACTED] for a group of three persons. The Department should have used the last 30 days of pay stubs (December 2015). In calculating adjusted gross income the Petitioner is entitled to a standard deduction of \$ [REDACTED] based upon a group size of three. RFT 255 (October 2014), p. 1. Earned income is also reduced by 20% as the Department is required to credit earnings with an earned income deduction.

The Petitioner is paid weekly. Department policies are found in BEM 505 require that the average weekly or biweekly check be determined by adding the checks together and dividing by number of checks. Once this amount is determined, it is multiplied by 4.3, if the checks are earned weekly.

In addition, the Department incorrectly determined earned income. Using the four checks issued to Petitioner in December 2015, \$ [REDACTED], \$ [REDACTED], \$ [REDACTED] and \$ [REDACTED] the check total \$ [REDACTED]. The gross income for the month is  $\$ [REDACTED] \div 4 = \$ [REDACTED]$  X 4.3 = \$ [REDACTED]. Thus, the Department using December pay stubs improperly calculated earned income for January 2016, which is the income which should have been used to calculate January 2016 FAP benefits. Exhibit 3. Using the checks from November 2015 the pay stubs were \$ [REDACTED], \$ [REDACTED] and \$ [REDACTED] which total \$ [REDACTED]. The gross income for the month is  $\$ [REDACTED] \div 4 = \$ [REDACTED]$  X 4.3 = \$ [REDACTED]. This gross income should have been used when calculating December 2015 FAP benefits. Neither month's income totals \$ [REDACTED]. Based upon this error, the Department must recalculate the Petitioner's January FAP budgets.

In this case the Department reduced the Petitioner's December 2015 FAP benefits without issuing a Notice of Case Action. The Department's Notice issued November 20, 2015, affected January 2016 FAP benefits only; and thus, December benefits should not have been reduced as no proof that a negative action was issued for December was presented at the hearing. Exhibit 2.

## All Programs

Upon certification of eligibility results, Bridges automatically notifies the client in writing of positive and negative actions by generating the appropriate notice of case action. The notice of case action is printed and mailed centrally from the consolidated print center.

BEM 505 addresses the effective date of a negative action and requires:

### FIP, SDA, RAP and FAP

For income increases that result in a benefit decrease, action must be taken and notice issued to the client within

the Standard of Promptness (FAP - 10 calendar days, FIP/SDA - 15 workdays). The effective month is the first full month that begins after the negative action effective date.

**Example:** On 11/21 an FAP client reports starting employment on 11/14. Action must be taken to affect January benefits. (Allow for 10 calendar days processing and timely suspense period.) BEM 505, p. 11.

Thus, based upon Department policy, the Petitioner's December 2015 FAP benefits should not have been reduced.

It also appears that the Department should have inquired of the Petitioner regarding her high pay stub of \$ [REDACTED] paid on December 5, 2015, and determined whether it should be excluded. This did not occur as required by Department policy. BEM 505 requires the Department to determine standard monthly income and further provides:

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.

**Note:** Determine the amount to budget per pay period. BEM 505, (July 1, 2015), p. 2

Prospect income using a best estimate of income expected to be received during the month (or already received). **Seek input from the client to establish an estimate, whenever possible.**

To prospect income, you will need to know:

- The type of income and the frequency it is received (such as, weekly).
- The day(s) of the week paid.
- The date(s) paid.
- The gross income amount received or expected to be received on each pay date. BEM 505, p. 2-3.

**Note:** If payments in the new amount have been received and they are accurate reflections of the future income, use them in the budget for future months. BEM, 505, p. 6

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 reduced the Petitioner's FAP benefits for December 2015 and improperly determined both earned and unearned income when determining January 2016 FAP benefits. As regards unearned income, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it calculated unearned income.

### **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 correct the December 2015 FAP benefit reduction and reinstate the FAP benefit amount existing before the decrease.
2. The Department shall recalculate the Petitioner's FAP benefits for January 2016 and use December 2015 pay amounts presented by the Work Number when calculating earned income. The Department shall recalculate unearned income for the January 2016 FAP budget based upon actual income received and shall not include FIP income, which ended effective January 1, 2016.
3. The Department shall issue an FAP supplement to the Petitioner, if any are due; and the Petitioner is otherwise entitled to receive same, in accordance with Department policy.
4. The Department shall provide the Petitioner a written Notice of Case Action after FAP benefits are determined for January 2016.

LMF/jaf



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**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]