



RICK SNYDER
GOVERNOR

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

MIKE ZIMMER
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: March 8, 2016
MAHS Docket No.: 16-000703
Agency No.: [REDACTED]
[REDACTED]

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 March 3, 2016, from Detroit, Michigan. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by [REDACTED] Eligibility Specialist, and [REDACTED] Family Independence Manager.

ISSUE

Did the Department properly process Petitioner's member add to her Food Assistance Program (FAP) case and calculate her 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 is an ongoing recipient of FAP benefits.
2. On July 30, 2015, Petitioner filed a change report notifying the Department that her mother was residing with her.
3. On September 15, 2015, Petitioner filed an application for State Emergency Relief (SER) assistance listing herself as the only member of her household (Exhibit C).
4. On October 27, 2015, Petitioner filed another change report notifying the Department that her mother was residing with her.

5. On December 15, 2015, Petitioner filed another change report notifying the Department that her mother was residing with her.
6. On December 30, 2015, the Department sent Petitioner a Notice of Case Action adding Petitioner's mother to her FAP group and increasing Petitioner's monthly FAP benefits to \$357 effective January 1, 2016 through December 31, 2016. The budget summary on the Notice shows that the only household income considered was \$28 in monthly unearned income. (Exhibit D).
7. On January 4, 2016, the Department sent Petitioner a Notice of Case Action decreasing her FAP group's benefits to \$16 monthly. The Notice showed that Petitioner and her mother were FAP group members and the household had \$1541 in gross monthly unearned income. (Exhibit B.)
8. On January 19, 2016, the Department received Petitioner's written request for hearing (i) requesting that her mother be added to her case from September 2015 and she be supplemented for FAP benefits she was eligible to receive and (ii) disputing the reduction of her monthly FAP benefits to \$16 effective February 1, 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.

Petitioner requested a hearing raising two issues: (i) she contends that the Department erred in failing to add her mother to her FAP case beginning September 2015 and (ii) she disputes the reduction of her FAP benefits to \$16 monthly effective February 1, 2016.

At the hearing, there was some conflicting testimony concerning whether Petitioner notified the Department that she and her mother purchased and prepared food together. Persons who live together and purchase and prepare food together are members of the same FAP group. BEM 212, p. 6. Purchasing and preparing food together includes persons who (i) contribute to the purchase of food; (ii) share the preparation of food,

regardless of who paid for it; or (iii) eat from the same food supply, regardless of who paid for it. BEM 212, p. 6. Based on Petitioner's hearing request seeking a FAP supplement on the basis that her mother was in her household and the evidence that no new FAP application had been filed by her mother, the evidence establishes that Petitioner sought to add her mother to her FAP group when she reported her mother in her household.

A member add that increases FAP benefits is effective the month after it is reported or, if the new member left another group, the month after the member delete. BEM 212 (October 2015), p. 9; BEM 550 (October 2015), p. 4. However, income increases that result in a benefit decrease are effective the first full month that begins after the negative action effective date. BEM 505 (July 2015), p. 11.

The Department acknowledged receiving change reports from Petitioner informing the Department that her mother had moved in with her on July 30, 2015; October 27, 2015; and December 15, 2015. The Department pointed out, however, that Petitioner did not include her mother as a household member in the September 15, 2015 SER application she submitted to the Department. Petitioner testified that her mother had moved in with her when she submitted the July 30, 2015 change report but admitted that she had moved out and was not living with her at the time she submitted the September 15, 2015 SER application. She explained that her mother was in and out of her home but moved back in at the end of September 2015 or beginning of October 2015 and continued to live with her until mid-January 2016. She next reported to the Department that her mother was back in her home on October 27, 2015.

The Department's evidence showed that Petitioner's mother was not added to Petitioner's FAP group until January 1, 2016 (Exhibit D). However, it is clear that Petitioner reported her mother back in her home on October 27, 2015 and there was no evidence to dispute Petitioner's testimony that her mother continued to reside with her when she moved in October. Because Petitioner reported the change in October 27, 2015 and her mother remained in her household, if the member add results in a benefit increase, the change should affect November 2015 FAP benefits. If the additional income brought into the FAP group by Petitioner's mother results in a FAP decrease, the change would not be effective before December 2015. In this case, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it processed Petitioner's change report to affect January 2016 FAP benefits.

At the hearing Petitioner reported that her mother had moved out of her household in mid-January 2016. It was unclear whether she had previously reported this to the Department and, if so, when. However, it was clearly reported on the record at the March 3, 2016 hearing and should be processed in accordance with Department policy.

Petitioner also expressed concerns regarding the calculation of her FAP benefits for February 1, 2016 ongoing. Because the Department did not present a FAP net income

budget showing the calculation of benefits, the information on the January 4, 2016 Notice of Case Action was reviewed at the hearing (Exhibit B).

The Notice showed that FAP benefits were based on gross monthly unearned income of \$1541. The Department testified that the income was based on Petitioner's gross monthly Retirement, Survivors and Disability Insurance (RSDI) income of \$691, her gross monthly Supplemental Security Income (SSI) benefits of \$56, her gross monthly State SSI Payment (SSP) of \$14 (based on \$42 paid quarterly), her mother's gross monthly SSI of \$733, and her mother's gross monthly SSP of \$14 (based on \$42 paid quarterly). The sum of these income sources is \$1514. Therefore, the Department properly calculated the household's gross unearned income. Petitioner testified that she also had self-employment income that she had reported to the Department that was not included in the budget. The Department established that it considered self-employment income of \$28 in the January 2016 budget (Exhibit D), but failed to satisfy its burden of showing that it properly removed that income for the February 2016 ongoing budget.

The deductions to gross income were also reviewed. Because Petitioner and her mother each receive SSI, they are both senior/disabled/veteran (SDV) members of the FAP group. See BEM 550 (October 2015), p. 1. For FAP groups with one or more SDV members and earned income, the Department must reduce the household's gross monthly income by the following deductions: the standard deduction (based on group size), child care expenses, child support expenses, verified out-of-pocket medical expenses in excess of \$35, an earned income deduction equal to 20% of the earned income amount, and the excess shelter deduction. BEM 554 (October 2015), p. 1; BEM 556 (July 2013), pp. 4-5.

Based on a FAP group size of two, Petitioner is eligible for a \$154 standard deduction, as shown on the budget. RFT 255 (October 2015), p. 1. Petitioner confirmed that she and her mother had had no child care or child support expenses. Therefore, the budget properly showed no deduction for those expenses. The excess shelter deduction is based on a client's monthly shelter expenses and the applicable utility standard for any utilities the client is responsible to pay. BEM 556, pp. 4-5. The budget showed \$308 in monthly rent, which Petitioner did not dispute, and the \$539 heat and utility (h/u) standard, which is the most beneficial utility standard available to a client. See RFT 255, p. 1. If Petitioner has self-employment income, she is eligible for an earned income deduction.

The budget summary on the Notice showed that Petitioner was not eligible for any medical expense deduction. Petitioner disputed this finding, alleging that she and her mother had medical expenses and that she had submitted her medical expenses. The Department testified that its system showed that Petitioner had submitted some medical statement but was not able to establish whether that expense was an allowable medical expense deduction and whether it had been processed. Therefore, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy

when it calculated Petitioner's FAP medical expense deduction. Because the Department could not establish that it properly calculated the group's income, earned income deduction, and medical expense deduction, if any, the Department failed to satisfy its burden of showing that it calculated Petitioner's FAP benefits in accordance with Department policy.

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 added Petitioner's mother to her FAP group based on the October 27, 2015 change report and when it calculated Petitioner's FAP allotment.

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. Add Petitioner's mother as a FAP group member based on the October 27, 2015 reported change date and continue to include her as a FAP group member until the member delete reported by Petitioner is processed in accordance with policy;
2. Recalculate Petitioner's FAP budget for each month beginning with the effective date of the member add;
3. Issue supplements to Petitioner for any FAP benefits she was eligible to receive but did not from November 2015 ongoing; and
4. Notify Petitioner in writing of its decision.



AE/

Alice C. Elkin
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]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner

[REDACTED]
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