



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: April 11, 2016
MAHS Docket No.: 16-002838
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Eric Feldman

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 April 6, 2016, from Detroit, Michigan. The Petitioner was represented by Kevin Mundy (Petitioner). The Department of Health and Human Services (Department) was represented by [REDACTED] Eligibility Specialist; and [REDACTED], Family Independence Manager.

ISSUE

Did the Department properly decrease Petitioner's Food Assistance Program (FAP) benefits to \$113 effective March 1, 2016, ongoing?

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 [REDACTED], the Department sent Petitioner a Notice of Case Action notifying him that his FAP benefits would decrease to \$113 effective March 1, 2016. See Exhibit A, pp. 14-15.
3. On [REDACTED], Petitioner filed a hearing request, protesting the decrease in his FAP allotment. See Exhibit A, pp. 3-4.

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.

As a preliminary matter, Petitioner indicated that he also requested a hearing in which he was protesting his Medicare Savings Program (MSP) benefits. However, a review of Petitioner's hearing request finds that he is only disputing his FAP benefits. See Exhibit A, pp. 3-4. As such, the undersigned Administrative Law Judge (ALJ) lacks the jurisdiction to address Petitioner's dispute with the MSP benefits. See BAM 600 (October 2015), pp. 1-6. Petitioner can attempt to file another hearing request to dispute his MSP benefits. See BAM 600, pp. 1-6.

In the present case, Petitioner's certified group size is one and that he is a senior/disabled/disabled veteran (SDV) member. As part of the evidence record, the Department presented the March 2016 budget for review. See Exhibit A, pp. 6-7.

First, the Department calculated Petitioner's gross unearned income to be \$838, which he did not dispute. See Exhibit A, p. 6 and see BEM 503 (October 2015), p. 28 (the Department counts the gross benefit amount of Retirement, Survivors, and Disability Insurance (RSDI) as unearned income).

Second, the Department properly applied the \$154 standard deduction applicable to Petitioner's group size of one. See Exhibit A, p. 6 and RFT 255 (October 2015), p. 1. The Department also did not provide Petitioner with any medical expense deduction, which he did not object to during the hearing. See Exhibit A, p. 6.

Third, the Department calculated Petitioner's child support deduction to be \$170.87. See Exhibit A, p. 6. Petitioner disputed this amount and testified that his monthly child support obligation is \$214. In fact, Petitioner provided a letter from the Social Security Administration (SSA) dated [REDACTED], which stated that \$214 would be deducted each month from his RSDI income to pay for the child support. See Exhibit A, p. 13. This document was received by the Department on [REDACTED]. See Exhibit A, p. 13. In response, the Department failed to provide sufficient testimony indicating how it calculated the \$170.87 for the child support deduction. The

Department testified that if Petitioner was also paying for any arrearages, this amount could not be included in the child support deduction.

For groups with one or more SDV member, the Department allows court ordered child support and arrearages paid to non-household members. BEM 554 (October 2015), p.

1. The following child support expenses are allowed:

- The amount of court-ordered child support and arrearages paid by the household members to non-household members in the benefit month.
- Court-ordered third party payments (landlord or utility company) on behalf of a non-household member.
- Legally obligated child support paid to an individual or agency outside the household, for a child who is now a household member, provided the payments are not returned to the household.

BEM 554, p. 6. The Department does not allow more than the legal obligation if the client is up-to-date on their child support payments. BEM 554, p. 6. However, if they are behind and making arrearage payments, allow the total amount paid even if it exceeds the court-ordered amount. BEM 554, p. 6. Current and arrearage child support expenses must be paid to be allowed. BEM 554, p. 6.

The Department verifies child support expenses and arrearages paid to non-household members at application, redetermination and when a change is reported. BEM 554, p. 13. All of the following must be verified:

1. The household's legal obligation to pay.
2. The monthly amount of the obligation for current child support.
3. The amount of child support the household actually pays.

BEM 554, p. 6. Current payments must be entered separately from arrearage payments on Bridges. BEM 554, p. 6. A separate arrearage order is not needed to allow arrearage payments. BEM 554, p. 6. If MDHHS verifies child support payments are court ordered, the original court order also serves as verification of the arrearage. BEM 554, p. 6.

Acceptable verification sources include, but are not limited to:

- For the household's legal obligation to pay and current obligation amount:
 - Court or administrative order.
 - Legally enforceable separation agreement.
- For the household's actual child support and arrearages paid:
 - Wage withholding statements.
 - Verification of withholding from unemployment compensation or other unearned income.
 - Statements from the custodial parent regarding direct payments.

- Statements from the custodial parent regarding third party payments the noncustodial parent pays or expects to pay on behalf of the custodial parent.
- Data obtained from the state's Child Support Enforcement System (MICSES).

BEM 554, pp. 6-7. Note, documents that are accepted as verification of the household's legal obligation to pay child support and arrearages are not acceptable as verification of the household's actual monthly payment. BEM 554, p. 7.

Based on the foregoing information and evidence, the Department failed to satisfy its burden of showing that it properly calculated Petitioner's child support expenses. See BEM 554, pp. 6-7. The Department was incorrect when it concluded that arrearages paid are not included in the child support expenses. Instead, policy allows the amount of the court-ordered child support and arrearages to be included in the child support calculation. BEM 554, pp. 6-7. In fact, Petitioner presented evidence that he is paying more than the \$170.87 child support deduction that the Department calculated. See Exhibit A, p. 13. Policy, though, does request further verification of the child support expenses and arrearages, which the undersigned could not decipher during the hearing. As such, the Department will recalculate Petitioner's child support expenses effective [REDACTED], ongoing, including any necessary verification to obtain in accordance with Department policy. BEM 554, pp. 6-7.

Finally, the Department presented Petitioner's Excess Shelter Deduction budget (shelter budget) for March 2016. See Exhibit A, p. 8. The shelter budget indicated Petitioner's housing expenses were \$349, which Petitioner did not dispute. See Exhibit A, p. 8. It should be noted that Petitioner indicated that his rent increased to \$364 in April 2016, however, the undersigned reviewed Petitioner's budget for March 2016. Also, Petitioner's shelter budget showed that he was not receiving the \$539 heat and utility (h/u) standard. See Exhibit A, p. 8. The shelter budget showed that Petitioner only receives the telephone standard of \$33 and non-heat electric standard of \$119. RFT 255, p. 1 and see Exhibit A, p. 8.

For groups with one or more SDV members, the Department uses excess shelter. See BEM 554, p. 1. In calculating a client's excess shelter deduction, the Department considers the client's monthly shelter expenses and the applicable utility standard for any utilities the client is responsible to pay. BEM 556 (July 2013), pp. 4-5. The utility standard that applies to a client's case is dependent on the client's circumstances. The mandatory h/u standard, which is currently \$539 and the most advantageous utility standard available to a client, is available only for FAP groups (i) that are responsible for heating expenses separate from rent, mortgage or condominium/maintenance payments; (ii) that are responsible for cooling (including room air conditioners) and verify that they have the responsibility for non-heat electric; (iii) whose heat is included in rent or fees if the client is billed for excess heat by the landlord, (iv) who have received the home heating credit (HHC) in an amount greater than \$20 in the current month or the immediately preceding 12 months, (v) who have received a Low-Income

Home Energy Assistance Act (LIHEAP) payment or a LIHEAP payment was made on his behalf in an amount greater than \$20 in the current month or in the immediately preceding 12 months prior to the application/recertification month; (vi) whose electricity is included in rent or fees if the landlord bills the client separately for cooling; or (vii) who have any responsibility for heating/cooling expense (based on shared meters or expenses). BEM 554, pp. 16-20 and RFT 255, p. 1.

To show responsibility for heating and/or cooling expenses, acceptable verification sources include, but are not limited to, current bills or a written statement from the provider for heating/cooling expenses or excess heat expenses; collateral contact with the landlord or the heating/cooling provider; cancelled checks, receipts or money order copies, if current as long as the receipts identify the expense, the amount of the expense, the expense address, the provider of the service and the name of the person paying the expense; DHS-3688 shelter verification; collateral contact with the provider or landlord, as applicable; or a current lease. BEM 554, pp. 16-20. For groups that have verified that they own or are purchasing the home that they occupy, the heat obligation needs to be verified only if questionable. BEM 554, p. 16.

FAP groups not eligible for the mandatory h/u standard who have other utility expenses or contribute to the cost of other utility expenses are eligible for the individual utility standards that the FAP group has responsibility to pay. BEM 554, p. 19. These include the non-heat electric standard (\$119 as of [REDACTED]) if the client has no heating/cooling expense but has a responsibility to pay for non-heat electricity; the water and/or sewer standard (currently \$81) if the client has no heating/cooling expense but has a responsibility to pay for water and/or sewer separate from rent/mortgage; the telephone standard (currently \$33) if the client has no heating/cooling expense but has a responsibility to pay for traditional land-line service, cell phone service, or voice-over-Internet protocol; the cooking fuel standard (currently \$33) if the client has no heating/cooling expense but has a responsibility to pay for cooking fuel separate from rent/mortgage; and the trash removal standard (currently \$19) if the client has no heating/cooling expense but has a responsibility to pay for trash removal separate from rent/mortgage. BEM 554, pp. 20-24 and RFT 255, p. 1.

Sometimes the excess shelter deduction calculation will show more than one utility deduction. However, if the client is eligible for the \$539 mandatory h/u that is all the client is eligible for. If he is not eligible for the mandatory h/u, he gets the sum of the other utility standards that apply to his case. BEM 554, pp. 15 and 20.

In this case, Petitioner testified that he has a window air conditioner and that he pays for this cooling. Policy states that FAP groups who pay for cooling (including room air conditioners) are eligible for the h/u standard if they verify they have the responsibility to pay for non-heat electric. BEM 554, p. 16. Furthermore, acceptable verification sources for non-heat electric include, but are not limited to current bills or a written statement from the provider for electric expenses. See BEM 554, p. 17. Both parties acknowledged that Petitioner is responsible for electric expenses. As such, the undersigned can infer that the Department has acceptable verification of the non-heat

electric as he is already receiving the mandatory individual standard of non-heat electric, which requires the same form of verification (See BEM 554, pp 20-21). In summary, the evidence presented that Petitioner is eligible for the \$539 mandatory h/u standard in accordance with Department policy because his cooling is separate from his housing costs. See BEM 554, pp. 16-17.

DECISION AND ORDER

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 improperly calculated Petitioner's FAP benefits effective [REDACTED].

Accordingly, the Department's FAP 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 the FAP budget (including the child support expenses) effective [REDACTED], ongoing;
2. Apply Petitioner's \$539 mandatory h/u standard effective [REDACTED];
3. Issue supplements to Petitioner for any FAP benefits he was eligible to receive but did not from [REDACTED], ongoing; and
4. Notify Petitioner of its FAP decision.

EF/hw


Eric Feldman

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]

Petitioner

[REDACTED]