



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: July 25, 2016
MAHS Docket No.: 16-008109
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 [REDACTED], from [REDACTED] Michigan. The Petitioner was represented by herself. A witness, [REDACTED], also appeared on behalf of the Petitioner. The Department of Health and Human Services (Department) was represented by [REDACTED] Hearing Facilitator.

ISSUE

Did the Department properly close the Petitioner's Food Assistance Program (FAP) case?

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 completed a Redetermination dated [REDACTED], with a due date of [REDACTED]. In the Redetermination, the Petitioner indicated her husband was self-employed and had income of \$ [REDACTED] monthly, noting it's different for every job. The Petitioner's husband is self-employed and runs a business installing tile. Exhibit 6.

3. The Petitioner provided a paycheck for [REDACTED] with the Redetermination, which indicated income of \$ [REDACTED] from her husband's self-employment for [REDACTED]. Exhibit 6. This check represented the only income they received that month.
4. The Department closed the Petitioner's FAP effective [REDACTED], due to excess income.
5. The Petitioner provided her husband's business income tax return, Schedule C Profit or Loss From Business statement, which was used by the Department to determine income from self-employment. Exhibit 8. The Department used \$ [REDACTED] representing the total proceeds when determining the Petitioner's eligibility for FAP. The Department also allowed a 25 percent expense deduction off the gross sales amount to determine the gross income.
6. The Schedule C Profit or Loss From Business tax return indicated gross income of \$ [REDACTED] and provided other business expense items shown in Part II of Schedule C. Schedule C shows an expense of \$ [REDACTED] for materials and supplies purchased for the business. Exhibit 8.
7. The Petitioner's FAP group size is [REDACTED] persons.
8. The Petitioner requested a timely hearing on [REDACTED]

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 closed the Petitioner's FAP case based on its calculation of Petitioner's husband's self-employment income exceeding the income limit for FAP eligibility for their FAP group of [REDACTED] members. Exhibit 3. The closure occurred after completion of a Redetermination in [REDACTED] and was effective [REDACTED]. The Department requested that the Petitioner provide the self-employment income tax return filed by her husband, which was utilized by the Department to verify and determine income from self-employment. A review of the Schedule C Profit or Loss From Business provided by the Petitioner, indicates that the Department did not properly

calculate self-employment income as per the Department policy requirement that in determining expenses to be deducted from proceeds the Department must utilize the higher of 25 percent of the proceeds or actual business expense, whichever is higher.

The Department testified at the hearing that the Department calculated the income as follows. The Department used the gross receipts or sales amount of \$ [REDACTED] which it equated to "proceeds", and applied the flat 25 percent of the proceeds to determine deductible business expenses. Using this method, the total annual income from self-employment is \$ [REDACTED] ($\$ [REDACTED] - \$ [REDACTED]$ (25 percent of $\$ [REDACTED] = \$ [REDACTED]$). The monthly income was determined by dividing the total annual income by 12 months resulting in monthly income of \$ [REDACTED]. While the Department is allowed to make this calculation to determine income from self-employment, the Department is to use the **higher** of actual expenses or 25 percent, whichever is higher. The Department did not consider the actual expenses associated with the business to see if this resulted in a higher business expense figure, and thus, did not comply with the requirements of Department policy.

A review of the Schedule C Profit or Loss From Business, demonstrates that there were expenses reported on the Schedule which were associated with the gross receipts or sales. The first such expense is the cost of goods in the amount of \$ [REDACTED] Exhibit 8. The Department's analysis should have reviewed the reported expenses and sought verification from the Petitioner's husband of those expenses, which were the costs associated with materials and supplies to perform the work. The Petitioner must be given an opportunity to verify actual expenses should he choose to do so.

In addition, there were several expenses set forth in Part II of Schedule C that the Petitioner should be allowed the opportunity to verify. These expenses shown on Schedule C include maintenance and repairs \$ [REDACTED] tools \$ [REDACTED] office expense \$ [REDACTED] and possibly the cost of insurance other than health in the amount of \$ [REDACTED] depending on what the insurance premium covers.

Some of the expenses reported in Petitioner's Schedule C are not allowed by Department policy, such as, deductible meals and entertainment. Thus, based on the tax information provided to establish income from self-employment, the Department was required to offer the Petitioner the opportunity to verify actual business expenses and complete a DHS-431, a Self-Employment Statement, with receipts. The Department testified at the hearing that it did not advise the Petitioner that in determining self-employment expenses, actual expenses could be used rather than accept the Department's application of the straight 25 percent expense deduction allowed by the Department policy for the calculation of business expenses.

Department policy set forth below allows that the income tax return is proper verification of **income** as long as it is representative of future income. The Department provided no information with regard to whether it made any inquiry of the Petitioner regarding whether the

income was representative. The Department should also inquire whether the self-employment income has occasioned an increase or decrease in income. BEM 502, p. 7.

Department policy provides:

The amount of self-employment income before any deductions is called total proceeds. Countable income from self-employment equals the total proceeds **minus** allowable expenses of producing the income. If allowable expenses exceed the total proceeds, the amount of the loss cannot offset any other income **except** for farm loss amounts.

Allowable expenses (except MAGI related MA) are the higher of 25 percent of the total proceeds, or actual expenses if the client chooses to claim and verify the expenses. BEM 502 (July 1, 2016), p. 3.

Department policy also identifies what it considers allowable and not allowable expenses:

SELF-EMPLOYMENT EXPENSES

Allowed

Allowable expenses include all of the following:

- Identifiable expenses of labor, stock, raw material, seed, fertilizer, etc.
- Interest and principal on loans for equipment, real estate or income-producing property.
- Insurance premiums on loans for equipment, real estate and other income-producing property.
- Taxes paid on income-producing property.
- Transportation costs while on the job (example: fuel).
- Purchase of capital equipment.
- A child care provider's cost of meals for children. Do **not** allow costs for the provider's own children.
- **Any other identifiable expense of producing self-employment income except those listed below.**

Note: Allowable expenses for rental/room and board are different than those listed above; see BEM 504, ALLOWABLE RENTAL EXPENSES.

Not Allowed

Do **not** enter any of the following as self-employment expenses in Bridges:

- A net loss from a previous period.
- Federal, state and local income taxes.
- Personal entertainment or other individual business expenses.
- Money set aside for retirement.
- Depreciation on equipment, real estate or other capital investments.

The Department is to use the Income tax return as the primary source of verification of Income and Department policy provides:

Self- Employment Income

- Primary source - Income tax return provided:
 - The client hasn't started or ended self-employment, or received an increase/decrease in income, etc.
 - The tax return is still representative of future income.
 - 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. BEM 502, p. 7

As regards the verification of actual business expenses incurred by the self-employment and associated with the business the Department policy requires **actual verification** with receipts of these expenses.

Self-employment Expenses

- All Programs

- DHS-431, Self-Employment Statement, with receipts. BEM 502, p. 7.

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 closed the Petitioner's FAP case due to excess income based on self-employment, as it is determined the Department did not properly determine if 25 percent of gross sales was higher than the actual business expenses reported on the tax return, as it did not consider the actual business expenses incurred by the Petitioner's spouse in conducting his business.

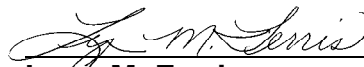
DECISION AND ORDER

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 reinstate the Petitioner's FAP case as of the [REDACTED], date of closure.
2. The Department shall recalculate the income from self-employment and determine monthly gross income in accordance with Department policy. In doing so, the Department shall afford the Petitioner to verify actual business expenses associated with the self-employment.
3. The Department shall provide written notice of its determination to the Petitioner regarding the Petitioner's FAP eligibility.

LMF/jaf



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]

cc:

[REDACTED]