



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: November 17, 2016
MAHS Docket No.: 16-015409
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Darryl Johnson

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 November 15, 2016, from Lansing, Michigan. The Petitioner appeared on her own behalf. The Department of Health and Human Services (Department) was represented by JET Case Manager [REDACTED] [REDACTED]

ISSUE

Did the Department properly reduce Petitioner's Food Assistance Program (FAP) benefits?

Petitioner had also raised a question in her hearing request regarding Family Independence Program (FIP) benefits. At the commencement of the hearing she indicated she no longer wished to address that matter and therefore it is not discussed herein.

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 was an on-going FAP recipient.
2. Petitioner's monthly income consists of \$ [REDACTED] from Retirement Survivors and Disability Insurance (RSDI), \$ [REDACTED] from Supplemental Security Income (SSI), and \$ [REDACTED] that is provided to her son from the FIP.

3. The Department included in Petitioner's budget a \$ [REDACTED] monthly state supplement to the SSI program, but Petitioner testified that she has not been receiving that supplement.
4. Petitioner's SSI is reduced by \$ [REDACTED] per month to repay an over-issuance she had received.
5. Petitioner's FAP budget had included rent of \$ [REDACTED] per month, but the Department discovered that her rent included \$ [REDACTED] per month for a washer and dryer rental.
6. In a mass update, the heat and utility standard used in the FAP budget was reduced to \$ [REDACTED] per month.
7. In a Notice of Case Action (Exhibit 1 Pages 20-24) the Department informed Petitioner that her FAP was being reduced to \$ [REDACTED] per month.
8. On October 10, 2016, the Department received Petitioner's hearing request, protesting the reduction of her FAP.

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 calculated Petitioner's FAP using unearned income of \$ [REDACTED]. Included in that income was a \$ [REDACTED] quarterly state supplement to her SSI, which is the equivalent of \$ [REDACTED] per month. Petitioner disputes receiving that supplement, and the Department had no evidence available at the time of the hearing to confirm that she is indeed receiving that supplement. The Department erred by basing her FAP on unverified income.

The Petitioner questioned whether the Department should include as countable expenses insurance that she is required to carry as the result of a child support order. BEM 554 (6/1/16) defines the allowable expenses for the FAP budget. With regard to child support, it states the following at page 6:

CHILD SUPPORT EXPENSES

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.

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

Insurance for a non-household child is not child support. From the available evidence, it is impossible to distinguish between insurance that Petitioner is purchasing to insure herself, and insurance that she is paying for to insure her child who is in guardianship. If Petitioner has evidence to show that she has been ordered to pay a third-party on behalf of that child, and if she has evidence to show that the amount she is paying can be determined, she should present that evidence to the Department and it can then evaluate whether that expense is an allowable child support expense. When doing so, she will want to pay attention to the following, *Id*:

Verification

Verify child support expenses and arrearages paid to non-household members at application, redetermination and when a change is reported. 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.

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

Verification Sources

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).

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.

Petitioner also raised the question of whether her income should include \$ [REDACTED] per month that is being withheld from her SSI to repay an overpayment. BEM 500 (1/1/16) contains the applicable policy. It defines gross income (p. 4) as: "Gross income is the amount of income before any deductions such as taxes or garnishments. This may be more than the actual amount an individual receives." Also,

Gross income includes amounts withheld from income which are any of the following:

- Voluntary.
- To repay a debt.
- To meet a legal obligation.

Some examples of amounts which may be withheld, but are still considered part of gross income are:

- Income taxes.
- Health or life insurance premiums.
- Medicare premiums.
- Union dues.
- Loan payments.
- Garnishments.
- Court-ordered or voluntary child support payments.

However, as explained at p. 6, “Amounts deducted by an issuing agency to recover a previous overpayment or ineligible payment are not part of gross income. These amounts are excluded as income.” If there were evidence that the SSI was being withheld to repay an IPV, it would still be countable, but there is no such evidence here. Therefore, the Department erred in counting as unearned income the \$ [REDACTED] that is being withheld.

DECISION AND ORDER

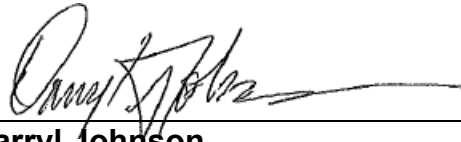
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with Department policy when it included in Petitioner’s FAP budget the \$ [REDACTED] that is being withheld each month, and the \$ [REDACTED] quarterly state supplement.

Accordingly, the Department’s decision is **MODIFIED**.

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 initiate a redetermination of Petitioner's eligibility for FAP benefits as of October 1, 2016.

DJ/mc



Darryl Johnson
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]