



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 28, 2016
MAHS Docket No.: 16-015741
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Susanne E. Harris

HEARING DECISION

Following the 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 22, 2016, from Lansing, Michigan. The Petitioner, [REDACTED] appeared and was represented by his Authorized Hearing Representative (AHR), [REDACTED]. The Department of Health and Human Services (Department) was represented by Family Independence Manager, [REDACTED] and Eligibility Specialist, [REDACTED].

PROCEDURAL HISTORY

The record closed at the conclusion of the hearing. The following documents were offered and admitted into evidence:

- Department: A--Three pages of an April 22, 2016, Assistance Application.
- B--June 7, 2016, Shelter Verification.
- C--Consumers Energy computer screen printout.
- D--July 22, 2016, email to Petitioner's caseworker.
- E-- July 22, 2016, the Petitioner's statement regarding his utility expense.

ISSUE

Did the Department properly take action to reduce the Petitioner's Food Assistance Program (FAP) monthly allotment?

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 in the monthly amount of \$ [REDACTED]
2. On July 22, 2016, the Department verified that the Petitioner's shelter expense was a \$ [REDACTED] monthly rental obligation and that the Petitioner had no heat expense.
3. On September 10, 2016, the Department notified the Petitioner that his monthly FAP allotment was reduced to \$ [REDACTED]
4. On October 24, 2016, the Department received the Petitioner's written hearing request protesting the Department's determination.

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.

BEM 554—Allowable Expenses, provides for the following.

An expense is allowed if all of the following:

- The service is provided by someone outside of the FAP group.
- Someone in the FAP group has the responsibility to pay for the service in money.
- Verification is provided, if required.

Responsibility to Pay

Responsibility to pay means that the expense is in the name of a person in the FAP group.

Exception: If the expense is in someone else's name, allow the expense if the FAP group claims the expense **and** the service address on the bill is where they live.

Do **not** allow any expense if the entire expense is directly paid by an agency or someone outside of the group.

An expense that is fully reimbursed is not allowed; see BEM 500, Reimbursements.

If an expense is partially reimbursed or paid by an agency or someone outside of the FAP group, allow **only** the amount that the group is responsible to pay, **unless** specific policy directs otherwise.

Allow only the FAP group's portion of child support, medical or dependent care expenses if another person outside of the FAP group is jointly responsible. If the FAP group's share can be identified, allow that portion. Otherwise, the expense is evenly prorated among the groups responsible for it and the FAP group's prorated share is allowed.

Note: Shelter, the heat and utility standard and the individual utility standards are **never** prorated, even if the expense is shared. Refer to the following sections found in this item:

- Shelter expenses.
- Mandatory heat and utility standard.
- Mandatory individual standards.

The expenses of a FAP member who is no longer living with the group are removed when the member removal is processed.

Verification

The Michigan Department of Health and Human Services (MDHHS) must verify the responsibility to pay and the amount of certain expenses; see the individual expense policy for verification requirements. Document verification used in the case record.

Do **not** budget expenses that require verification until the verification is provided. Determine eligibility and the benefit level without an expense requiring verification if it cannot be verified.

Do **not** include a medical expense that might be covered by a reimbursement if the amount of the reimbursement cannot be verified.

Treat subsequently provided verification from an eligible FAP group as a change. A supplement for lost benefits is issued **only** if the expense could **not** be verified within 30 days of the application and the local office was at fault.

Budgeting Expenses/Budget Month

Expenses are used from the same calendar month as the month for which benefits are being determined. **Example:** June expenses are used to determine June's benefits.

Expenses remain unchanged until the FAP group reports a change; see Bridges Administrative Manual (BAM) 220, Change Processing.

Determining the Monthly Amount

Bridges converts all expenses (except one-time-only expenses the group does not wish to average) to a nonfluctuating monthly amount. The same conversion method is used to determine countable available income in BEM 505. Bridges will convert a(n):

- Weekly expense, multiply the average weekly expense by 4.3.
- Twice a month expense, multiply the average weekly expense by 2.
- Every other week expense, multiply the average expense by 2.15.
- Yearly expense, average the bill over 12 months beginning with the first billing of the year.
- Quarterly expense, average the bill over three months.
- Expense billed less often than monthly. Bridges will average the one-time-only expense over the balance of the benefit period or over the period of time the client has the responsibility to pay. The expense is allowed beginning with the first benefit month the change can affect.

Shelter Expenses

Allow a shelter expense when the FAP group has a shelter expense or contributes to the shelter expense. Do **not** prorate the shelter expense even if the expense is shared. Shelter expenses are allowed when billed. The expenses do **not** have to be paid to be allowed.

Late fees and/or penalties incurred for shelter expenses are **not** an allowable expense.

Note: When a shelter expense is paid in advance, continue to allow the ongoing monthly shelter expense. **Example:** A client's monthly shelter expense is \$300. They pay \$900 to the landlord to cover the months of April-June. Continue to allow the monthly shelter obligation of \$300 in the FAP budgets for April-June.

Housing Expenses

Housing expenses include rent, mortgage, a second mortgage, home equity loan, required condo or maintenance fees, lot rental or other payments including interest leading to ownership of the shelter occupied by the FAP group.

The expense must be a continuing one. Payments that exceed the normal monthly obligation are **not** deductible as a shelter expense unless the payment is necessary to

prevent eviction or foreclosure, **and** it has **not** been allowed in a previous FAP budget. Additional expenses for optional charges, such as carports, pets, etc. are **not** allowed.

Note: Some finance companies or banks may combine billings for allowable shelter expenses with other loans. Be careful to only allow the portion that is an allowable shelter expense. Home equity loans are allowable, see Determining the Monthly Amount, Home Equity Loan Expense in this item.

In this case, the Department testified that the Petitioner's monthly FAP allotment was reduced because the Petitioner was no longer afforded a heat expense because he was not responsible for a heat expense. The Department bears the burden of proving, by a preponderance of the evidence standard, that it was acting in accordance with departmental policy when taking action to reduce the Petitioner's FAP benefits. The Petitioner's AHR challenged what he believed to be a drastic reduction in the Petitioner's monthly FAP allotment.

While it is logical that the elimination of a utility expense could certainly be responsible for such reduction, there is no FAP budget in evidence including the portion of the FAP budget which details how the shelter expense is calculated. Furthermore, the Petitioner is disabled and may therefore be eligible for medical expenses which may or may not be accounted for in the FAP budget. Without said budget, this Administrative Law Judge cannot examine whether or not the monthly allotment was otherwise properly calculated as well. As such, the Department fails to meet its burden of proving that it was acting in accordance with departmental policy when taking action to reduce the Petitioner's monthly FAP allotment.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it took action to reduce the Petitioner's monthly FAP allotment.

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, INCLUDING ISSUING A NEW ELIGIBILITY NOTICE, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Redetermine the Petitioner's eligibility for FAP back to October 1, 2016, and

2. Issue the Petitioner any supplement he may thereafter be due.



SH/nr

Susanne E. Harris
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]

Authorized Hearing Rep.

[REDACTED]

Petitioner

[REDACTED]