



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: December 2, 2016
MAHS Docket No.: 16-016088
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Eric J. 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 [REDACTED], from Detroit, Michigan. The Petitioner was represented by [REDACTED] (Petitioner). The Department of Health and Human Services (Department) was represented by [REDACTED], Hearings Facilitator.

ISSUE

Did the Department properly decrease Petitioner's Food Assistance Program (FAP) benefits effective [REDACTED]?

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. Petitioner's household consists of the following four group members: (i) Petitioner; (ii) Child A, DOB: [REDACTED]; (iii) Child B, DOB: [REDACTED]; and (iv) Child C, DOB: [REDACTED].
3. Child A and B both receive monthly Supplemental Security Income (SSI) income.
4. Petitioner receives \$ [REDACTED] in monthly Family Independence Program (FIP) benefits. Exhibit A, p. 4.

5. Petitioner's total rent due is \$ [REDACTED] but the amount comprises of the following obligations: (i) sewer - \$ [REDACTED] (ii) water - \$ [REDACTED] (iii) base rent - \$ [REDACTED] (iv) rubbish pickup - \$ [REDACTED] (v) school tax - \$ [REDACTED] and (vi) previous balance - \$ [REDACTED] Exhibit A, p. 26.
6. On [REDACTED], the Department sent Petitioner a Notice of Case Action notifying her that her FAP benefits decreased to \$ [REDACTED] effective [REDACTED], because her shelter deduction amount has changed; and her net unearned income amount has changed. Exhibit A, pp. 4-10.
7. On [REDACTED] Petitioner filed a hearing request, protesting the reduction in FAP benefits. Exhibit A, pp. 2-3.

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 the present case, Petitioner's certified group size is four; and Child A and Child B are senior/disabled/disabled veteran (SDV) members. As part of the evidence record, the Department presented the [REDACTED] and [REDACTED] for review. Exhibit A, pp. 17-19 and 24-25. Both budgets contained the same calculations. As such, the undersigned Administrative Law Judge (ALJ) reviewed the [REDACTED] budget as this is the effective period in which her benefits decreased. Exhibit A, pp. 24-25.

First, the Department calculated Petitioner's gross unearned income to be \$ [REDACTED] Exhibit A, p. 24. The Department testified the gross unearned income comprised of the following amounts: (i) Child A - \$ [REDACTED] in SSI benefits; (ii) Child B - \$ [REDACTED] in SSI benefits; and (iii) Petitioner - \$ [REDACTED] in FIP benefits. See BEM 503 (July 2016), pp. 14 and 32 (the Department counts the gross benefit amount of current Social Security Administration (SSA)-issued SSI income and FIP benefits as unearned income). However, when the undersigned ALJ added these amounts together, it resulted in a total gross income of \$ [REDACTED] which is \$ [REDACTED] less than the amount the Department calculated. The Department was unable to determine why it calculated the gross income to be \$ [REDACTED] higher. As such, the undersigned ALJ finds that the Department failed to satisfy its burden of showing that it properly calculated Petitioner's gross unearned income in accordance with

Department policy. BEM 503, pp. 14 and 32. The Department is ordered to recalculate Petitioner's gross unearned income effective [REDACTED].

Then, once the Department adds together the total income Petitioner receives, the Department will minus any deductions that she might qualify for. See Exhibit A, p. 24. The first deduction the Department properly applied was the \$ [REDACTED] standard deduction applicable to Petitioner's group size of four. Exhibit A, p. 24, and RFT 255 (October 2016), p. 1. Petitioner also did not dispute that the dependent care, medical, and child support deductions were calculated as zero. See Exhibit A, p. 24.

Also, the Department provides Petitioner with an excess shelter deduction, which is comprised of her housing utility expenses. The [REDACTED] FAP – Excess Shelter Deduction budget (shelter budget) indicated that Petitioner's monthly housing expense is \$ [REDACTED] Exhibit A, p. 19. Petitioner initially disputed this amount when she filed her hearing request and stated her rent is \$ [REDACTED] Exhibit A, p. 3. In response, the Department provided Petitioner's shelter verification to argue that the rent is not \$ [REDACTED] See Exhibit A, p. 26. Petitioner's total rent due is \$ [REDACTED] but the amount comprises of the following obligations: (i) sewer - \$ [REDACTED] (ii) water - \$ [REDACTED] (iii) base rent - \$ [REDACTED] (iv) rubbish pickup - \$ [REDACTED] (v) school tax - \$ [REDACTED] and (vi) previous balance - \$ [REDACTED] Exhibit A, p. 26. During the hearing, the Department was partially correct when it testified that her housing expenses should be the \$ [REDACTED] base rent plus the \$ [REDACTED] in school tax, resulting in housing expenses of \$ [REDACTED] Moreover, the Department was correct when it stated that the housing expenses should not include the sewer, water, and rubbish pickup, as these utility expenses are reflected in her mandatory h/u standard deduction. See Exhibit A, p. 19. Thus, the remaining questions is how the Department calculated Petitioner's housing expenses to be \$ [REDACTED] and should it include the previous balance of \$ [REDACTED] from her total rent due.

The Department allows a shelter expense when the FAP group has a shelter expense or contributes to the shelter expense. BEM 554 (June 2016), p. 12. Do not prorate the shelter expense even if the expense is shared. BEM 554, p. 12. Shelter expenses are allowed when billed. BEM 554, p. 12. The expenses do not have to be paid to be allowed. BEM 554, p. 12. Late fees and/or penalties incurred for shelter expenses are not an allowable expense. BEM 554, p. 12.

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. BEM 554, pp. 12-13. The expense must be a continuing one. BEM 554, p. 13. 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. BEM 554, p. 13. Additional expenses for optional charges, such as carports, pets, etc. are not allowed. BEM 554, p. 13.

Additionally, property taxes, state and local assessments and insurance on the structure are allowable expenses. BEM 554, p. 13. Do not allow insurance costs for the contents of the structure, for example, furniture, clothing and personal belongings. BEM 554, p. 13.

Based on the above information, the undersigned ALJ finds that the Department failed to satisfy its burden of showing that it properly calculated Petitioner's housing expenses in accordance with Department policy. See BEM 554, pp. 12-14. The undersigned ALJ agrees that the rent should include the base rent of \$ [REDACTED] plus the school tax of \$ [REDACTED] because policy allows such. See BEM 554, pp. 12-13. The only issue is whether or not to include the previous balance of \$ [REDACTED] in the housing expenses calculation. Exhibit A, p. 26. As long as the previous balance is not a late fee and/or penalty, this amount is an allowable expense and should be included in the housing expenses. See BEM 554, p. 12. As such, the Department is ordered to recalculate Petitioner's shelter expenses (housing expenses) effective [REDACTED], in accordance with Department policy. See BEM 554, pp. 12-14.

Finally, the Department provided Petitioner with the \$ [REDACTED] mandatory h/u standard, which encompasses all utilities (water, gas, electric, telephone) and is unchanged even if a client's monthly utility expenses exceed the \$ [REDACTED] amount. See Exhibit A, p. 19; BEM 554, pp. 14-16; and RFT 255, p. 1.

In summary, because the Department failed to satisfy its burden of showing that it properly calculated Petitioner's unearned income and shelter expenses, the Department is ordered to recalculate Petitioner's FAP allotment effective [REDACTED].

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 properly calculated Petitioner's FAP allotment 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 Petitioner's FAP budget (including unearned income and shelter expenses) for [REDACTED];
2. Issue supplements to Petitioner for any FAP benefits she was eligible to receive but did not from [REDACTED]; and

3. Notify Petitioner of its decision.

EJF/jaf



Eric J. 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



Petitioner

