



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 12, 2016  
MAHS Docket No.: 16-016976  
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], Partnership.Accountability.Training.Hope. (PATH) worker; and [REDACTED], PATH Career Manager from Michigan Works! Midland Service Center (Michigan Works!).

### **ISSUES**

Did the Department properly close Petitioner's Family Independence Program (FIP) benefits effective [REDACTED]?

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 was an ongoing recipient of FIP benefits.
2. Petitioner is an ongoing recipient of FAP benefits.

3. On or about [REDACTED], Petitioner reported that he was self-employed and that his self-employment would begin on or about [REDACTED]. Exhibit A, p. 40 (Hearing Summary).
4. On [REDACTED], the Department sent Petitioner a Verification Checklist (VCL), which requested verification of his self-employment and it was due back by [REDACTED]. Exhibit A, pp. 1-2.
5. On an unspecified date, Petitioner provided his self-employment verification to Michigan Works! (hereinafter referred to as the "PATH program").
6. The Department indicated that it did not receive the verifications from Petitioner.
7. On [REDACTED], a worker from the PATH program went to the local Department for a different case, but also brought Petitioner's submitted self-employment verification. Exhibit A, p. 40.
8. On [REDACTED] the Department sent Petitioner a Notice of Case Action notifying him that his FIP and FAP benefits would close effective [REDACTED], due to his failure to return the self-employment verifications. Exhibit A, pp. 3-7.
9. As a result of the Department receiving the self-employment verifications, it processed Petitioner's FIP and FAP eligibility. Exhibit A, p. 40.
10. On [REDACTED], the Department sent Petitioner a Notice of Case Action notifying him that his FIP benefits closed effective [REDACTED], based on excess income; and his FAP benefits decreased to \$ [REDACTED] effective [REDACTED]. Exhibit A, pp. 8-13.
11. On [REDACTED] Petitioner submitted gas receipts to show that he had actual expenses for the self-employment. Exhibit A, pp. 16-37.
12. On [REDACTED] 6, Petitioner filed a hearing request, protesting the Department's action. Exhibit A, pp. 41-42.

### **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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of

Human Services) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101-.3131.

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.

### **Preliminary matter**

Based on Petitioner's hearing request and his testimony, the undersigned Administrative Law Judge (ALJ) will address the following issues separately: (i) whether the Department properly closed Petitioner's FIP benefits effective [REDACTED]; and (ii) whether the Department properly decreased Petitioner's FAP benefits to \$ [REDACTED] effective [REDACTED].

### **FIP benefits**

The certified group must be in financial need to receive FIP benefits. BEM 515 (October 2015), p. 1. Need is determined to exist when budgetable income is less than the payment standard established by the department. BEM 515, p. 1. Program, living arrangement, grantee status and certified group size are variables that affect the payment standard. BEM 515, p. 1.

In the present case, Petitioner's certified group size was [REDACTED] which results in a maximum payment standard of \$ [REDACTED] RFT 210 (December 2013), p. 1.

It should be noted that there are [REDACTED] household members, including Petitioner's spouse, but she was not part of the FIP certified group size due to the receipt of Supplemental Security Income (SSI); and therefore, the Department will not take her income into consideration. See BEM 515, p. 1 and BEM 210 (January 2016), p. 8 (A FIP Eligibility Determination Group (EDG) member, who receives SSI, has a FIP EDG participation status of Other Adult or Other Child. The income, assets and needs of an SSI recipient are not considered in determining eligibility for the FIP EDG. However, their relationships to other EDG members are considered).

Once the Department establishes the certified group size and other eligibility factors, the Department determines if a financial need exists in order for the group to receive benefits. BEM 518 (October 2015), pp. 1-6. Financial need exists when the certified group passes the Qualifying Deficit Test, Issuance Deficit Test and the Child Support Income Test. BEM 518, p. 1. In order to show whether there is a financial need, the Department would present a FIP/SDA – Income Test budget (FIP budget) showing the calculations it used to determine eligibility. However, the Department failed to present

any FIP budget for the evidence record. Without such a budget, the undersigned ALJ is unable to determine if Petitioner's countable income exceeded the FIP program limits. The Department testified that Petitioner's self-employment income was \$ [REDACTED] after applying the 25 percent deduction given for self-employment. See BEM 502 (July 2016), p. 3. However, without a FIP budget, the undersigned ALJ is unable to confirm this amount. Moreover, the Department provides income deductions for people with countable earnings, which would also be reflected in the FIP budget. See BEM 518, p. 5 (Deduct \$ [REDACTED] from each person's countable earnings. Then deduct an additional 50 percent of each person's remaining earnings).

Accordingly, the Department failed to satisfy its burden of showing that it properly closed Petitioner's FIP benefits effective [REDACTED], based on excess income. Therefore, the Department is ordered to redetermine Petitioner's FIP eligibility effective [REDACTED].

### FAP benefits

In the present case, Petitioner disputed the decrease in his FAP allotment effective [REDACTED]. As such, the undersigned ALJ reviewed the [REDACTED] 6 budget from the Notice of Case Action dated [REDACTED]. Exhibit A, pp. 8-11.

First, Petitioner's certified group size is [REDACTED] and the spouse is a senior/disabled/disabled veteran (SDV) member. Exhibit A, p. 10.

Next, the Department calculated Petitioner's self-employment income to be \$ [REDACTED] which the Department determined after applying the 25 percent deduction. See BEM 502, p. 3. The Department testified that Petitioner provided two weekly pay stubs, which contained gross income amounts of \$ [REDACTED] and \$ [REDACTED]. Petitioner, though, testified that the amounts were actually [REDACTED] dollars less based on a loan payment being withheld from his income (gas money). However, policy states that loan payments are still considered to be part of gross income. See BEM 500 (January 2016), pp. 4-5. Then, the Department testified that it took the average of the two checks and multiplied by the 4.3 equation for weekly income in order to convert the income to a standard monthly amount, which results in a total gross income of \$ [REDACTED]. See BEM 505 (July 2016), p. 9. Subsequently, when the undersigned ALJ applies the 25 deduction, this results in a total income of \$ [REDACTED]. See BEM 502, p. 3. However, the undersigned ALJ calculated a higher gross income than the Department's \$ [REDACTED] calculation. As such, the undersigned ALJ finds that the Department failed to establish that it properly calculated Petitioner's self-employment income in accordance with Department policy. See BEM 502, p. 3 and BEM 505, p. 9. The Department is ordered to recalculate Petitioner's self-employment income in accordance with Department policy.

Additionally, Petitioner indicated that he did submit actual self-employment expenses that can be deducted from the total proceeds rather than the 25 percent deduction. However, the Department will use whichever amount gives him the higher deduction.

See BEM 502, p. 3. On [REDACTED], Petitioner submitted gas receipts to show that he had actual expenses for the self-employment. Exhibit A, pp. 16-37. But, the Department testified that the Department could not use most of the amounts submitted because they were previous to his job start and the ones that could be used totaled \$ [REDACTED] which is less than the 25 percent deduction given for self-employment. Exhibit A, p. 1 and 16-37. Furthermore, Petitioner testified that he submitted additional self-employment expenses on [REDACTED]; however, the undersigned ALJ lacks the jurisdiction to address these expenses because they were submitted after the hearing request. Nonetheless, because the Department is ordered to recalculate the self-employment income, it must review the submitted expenses on [REDACTED], and determine whether to apply the 25 percent deduction or the actual expenses. See BEM 502, p. 3.

Then, the Department calculated the unearned income to be \$ [REDACTED] which comprised of the spouse's \$ [REDACTED] SSI income plus \$ [REDACTED] in monthly State SSI Payments (SSP). See BEM 503 (July 2016), pp. 32-33 and RFT 248 (January 2016), p. 1.

Once the Department adds together the total income Petitioner receives, the Department will minus any deductions that he might qualify for. See Exhibit A, p. 11. The first deduction the Department properly applied was the \$ [REDACTED] standard deduction applicable to Petitioner's group size of [REDACTED]. Exhibit A, p. 11 and RFT 255 (October 2016), p. 1. Moreover, the evidence established that Petitioner did not qualify for any of the dependent care, medical, and child support deductions. Exhibit A, p. 11. It should be noted that Petitioner mentioned medical marijuana as a medical expense; however, policy states that medical marijuana is not an allowable medical expense. BEM 554 (June 2016), p. 11.

Also, the Department provides Petitioner with an excess shelter deduction, which is comprised of his housing and utility expenses. The shelter budget indicated that Petitioner's monthly housing expense is \$ [REDACTED] which he did not dispute. Exhibit A, p. 11. Moreover, the Department provided Petitioner with the \$ [REDACTED] mandatory heat and utility (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. 11; 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 self-employment income, 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 (i) failed to satisfy its burden of showing that it acted in accordance with Department policy when it closed Petitioner's FIP benefits effective [REDACTED]; and (ii) the Department


failed to satisfy its burden of showing that it acted in accordance with Department policy when it decreased Petitioner's FAP benefits effective [REDACTED].

Accordingly, the Department's FIP and 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. Redetermine Petitioner's FIP eligibility for [REDACTED];
2. Issue supplements to Petitioner for any FIP benefits he was eligible to receive but did not from [REDACTED];
3. Recalculate the FAP budget (including self-employment income) for [REDACTED];
4. Issue supplements to Petitioner for any FAP benefits he was eligible to receive but did not from [REDACTED]; and
5. Notify Petitioner of its decision.

EJF/jaf



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**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**

[REDACTED]

**Petitioner**

[REDACTED]

**Via email**

[REDACTED]