



RICK SNYDER
GOVERNOR

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

MIKE ZIMMER
DIRECTOR

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Date Mailed: March 16, 2016
MAHS Docket No.: 16-000284
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 March 7, 2016, from Detroit, Michigan. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by ██████████, Eligibility Specialist.

ISSUE

Did the Department properly calculate Petitioner's Food Assistance Program (FAP) benefits for January 1, 2016 ongoing?

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 lives with her ██████-year-old daughter ██████████, her ██████-year-old daughter ██████████, and her ██████-year-old granddaughter ██████████, and they all purchase and prepare food together.
3. ██████████ and ██████████ have employment income (Exhibit B and C).

4. Petitioner has Retirement, Survivors and Disability Insurance (RSDI) and Supplemental Security Income (SSI) benefits totaling \$753 monthly. She also receives a quarterly State SSI Payment (SSP) of \$42.
5. Petitioner does not have a mortgage but does pay property taxes.
6. In connection with a redetermination Petitioner submitted on November 30, 2015, the Department recalculated Petitioner's FAP eligibility and allotment.
7. On December 23, 2015, the Department sent Petitioner a Notice of Case Action notifying her that she was eligible to receive monthly FAP benefits of \$121 effective January 1, 2016.
8. On January 4, 2016, the Department received Petitioner's written request for hearing disputing the Department's calculation of her FAP benefits.

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.

Petitioner requested a hearing disputing the calculation of her FAP benefits. The Department did not present a FAP net income budget showing the calculation of benefits. Accordingly, the information on budget summary on the December 23, 2015 Notice of Case Action was reviewed with Petitioner.

The Notice showed that there were four members of Petitioner's FAP group: Petitioner, her ■-year-old daughter, her ■-year-old daughter, and her ■-year old granddaughter. Because ■ and ■ are under ■ years old and live with Petitioner, they are mandatory members of Petitioner's FAP group. See BEM 212 (October 2015), p. 1. Because Petitioner testified that ■ her ■-year-old daughter, purchased and prepared food with her, ■ was also properly a member of her FAP group. BEM 212, pp. 5-6. Although Petitioner testified that ■ was a full-time student, the Department testified that she was an eligible FAP group member based on her employment. See BEM 245, pp. 3-4. Therefore, the Department properly concluded that Petitioner had four-members in her FAP group.

The budget showed gross monthly unearned income of \$767. Petitioner confirmed that she received gross monthly SSI of \$87, gross monthly RSDI income of \$666 and quarterly SSP income of \$42. In calculating gross monthly income for FAP purposes, the Department includes \$14 in monthly SSP benefits based on her quarterly payments of \$42. See BEM 501 (October 2015), p. 33. The sum of Petitioner's gross monthly SSI, RSDI, and SSP totals \$767, consistent with the amount on the budget summary.

The budget summary showed earned income of \$1450. To determine future months' income, the Department must prospect income using a best estimate of income expected to be received during the month. BEM 505 (July 2015), p. 2. Income for the past 30 days is used to prospect income for the future if it appears to accurately reflect what is expected to be received in the benefit month. BEM 505, p. 5. If the past 30 days is not a good indicator of future income and fluctuations of income during the past 60 or 90 days appear to accurately reflect the income that is expected to be received in the benefit month, the Department should use income from the past 60 or 90 days. BEM 505, pp. 5-6. An employee's wages include salaries, tips, commissions, and bonuses. BEM 501 (July 2014), p. 6.

In this case, in prospecting [REDACTED] and [REDACTED] income, the Department testified that it relied on single paystubs submitted for each [REDACTED] paystub dated August 31, 2015 showing \$381.58 in gross income for the period August 10, 2015 to August 23, 2015 and [REDACTED] paystub dated April 17, 2015 showing \$293.48 in gross income for the period March 29, 2015 to April 11, 2015. Because the Department did not use income for the 30 to 90 day period prior to the redetermination period, the Department did not satisfy its burden of showing that it acted in accordance with Department policy when it calculated the earned income received by the FAP group members.

The deductions to income were also reviewed with Petitioner. Because Petitioner receives SSI, she is a senior/disabled/veteran (SDV) member of her FAP group. BEM 550 (October 2015), pp. 1-2. To arrive at net monthly income, the gross monthly income of a FAP group with an SDV member and earned income is reduced by the following deductions: an earned income deduction equal to 20% of the gross monthly earned income, a standard deduction based on group size, a child support deduction, a dependent care deduction, a medical expenses deduction for SDV members for verified medical expenses in excess of \$35, and an excess shelter deduction. BEM 554 (October 2015), p. 1; RFT 255 (October 2015), p. 1; BEM 550 (October 2015), p. 1.

Because Petitioner had a four-member FAP group, she was eligible for a \$167 standard deduction, as shown on the budget summary. RFT 255, p. 1. The earned income deduction is not shown in the budget on the December 23, 2015 Notice of Case Action but, because the Department did not satisfy its burden of showing that it calculated Petitioner's daughters' gross earned income in accordance with Department policy, it follows that the earned income deduction was also not properly calculated. Petitioner confirmed that her household had no child care, child support, or medical expenses. Therefore, she was not eligible for a deduction for such expenses.

The final deduction available to Petitioner was the excess shelter deduction, which is based on gross monthly shelter expenses and the utility standard that applies to the client's circumstances. In this case, the December 23, 2015 Notice of Case Action budget summary showed no housing costs and the \$539 mandatory heat and utility (h/u) standard, which is the most advantageous utility standard available to a client. See RFT 255, p. 1. Petitioner testified that her only housing costs were her property taxes. The Department's summary of documents Petitioner uploaded to her electronic case file on November 30, 2015 with her redetermination form includes a "property tax record." The Department failed to satisfy its burden of showing that it properly considered the property tax expenses or requested verification of such expenses that Petitioner failed to provide. See BEM 554, pp. 12-14.

Because the Department failed to satisfy its burden of showing that it properly calculated the Petitioner's daughters' earned income and their earned income deduction and properly considered Petitioner's property tax expenses in calculating the excess shelter deduction, 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 calculated Petitioner's FAP benefits for January 1, 2016 ongoing.

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. Recalculate Petitioner's FAP budget for January 1, 2016 ongoing;
2. Issue supplements to Petitioner for any FAP benefits she was eligible to receive but did not from January 1, 2016 ongoing; and
3. Notify Petitioner in writing of its decision.



ACE/tlf

Alice C. Elkin
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]
[REDACTED]
[REDACTED]
[REDACTED]

via electronic mail:

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