



RICK SNYDER
GOVERNOR

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

MIKE ZIMMER
DIRECTOR

[REDACTED]

Date Mailed: March 7, 2016
MAHS Docket No.: 16-000876
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Gary Heisler

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 3, 2016, from Lansing, Michigan. Petitioner was represented by herself. The Department was represented by Assistance Payments Supervisor [REDACTED]

ISSUE

Did the Department properly process Petitioner's report of a change in shelter expense?

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 Food Assistance Program (FAP) benefits.
2. On October 6, 2015, Petitioner submitted a rental payment verification which stated she paid \$ [REDACTED]
3. For November 2015, Petitioner received \$ [REDACTED] of Food Assistance Program (FAP) benefits based on a group size of 3, a \$ [REDACTED] housing expense and \$ [REDACTED] of unearned income.
4. For December 2015, Petitioner received \$ [REDACTED] of Food Assistance Program (FAP) benefits based on a group size of 3, a \$ [REDACTED] housing expense and \$ [REDACTED] of unearned income.

5. On January 19, 2016, Claimant submitted a hearing request. The hearing request was not submitted into evidence by the Department. This finding of fact is based on the testimony of Assistance Payments Supervisor [REDACTED]
6. On January 29, 2016, Claimant submitted an account statement which shows withdrawals for a mortgage payment on November 17, 2015, December 17, 2015, and January 27, 2016. There is a hand written message on the bottom of the print out. Part of that hand written statement is "And if we can't get this situation dated back to when we tried to clear this up – I still would like the hearing."
7. Beginning February 1, 2016, Petitioner's shelter expenses were changed and her Food Assistance Program (FAP) benefit amount increased.

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.

During this hearing both Petitioner and Assistance Payments Supervisor [REDACTED] indicated the issue in dispute is Petitioner's Food Assistance Program (FAP) shelter expense for the months of December 2015 and January 2016. The Department's position is that the reported shelter expense was not sufficiently verified until January 28, 2016 so the expense was not applied until then.

Bridges Eligibility Manual (BEM) 554 FAP Allowable Expenses and Expense Budgeting at page 14, under Shelter Expenses states:

Verification

Verify shelter expenses at application and when a change is reported. If the client fails to verify a reported change in shelter, remove the old expense until the new expense is verified.

Verify the expense **and** the amount for housing expenses, property taxes, assessments, insurance and home repairs.

Verification Sources

Acceptable verification sources include, but are **not** limited to:

Mortgage, rental or condo maintenance fees contracts or a statement from the landlord, bank or mortgage company.

Copy of tax, insurance, assessment bills or a collateral contact with the appropriate government or insurance office.

Cancelled checks, receipts or money order copies, if current. The receipt must contain minimum information to identify the expense, the amount of the expense, the expense address if verifying shelter, the provider of the service and the name of the person paying the expense.

DHS-3688, Shelter Verification form. A copy of this form will be sent to the FAP group and a task and reminder sent to the specialist when a change of address is done in Bridges. The due date will be on the form. The specialist must monitor for return of the form and take appropriate action if it is or is **not** returned.

Current lease.

The controversy in this case is the amount of rent/mortgage which Petitioner is responsible for. The documents in this record indicate that the property where Petitioner resides was purchased by [REDACTED]. The October 6, 2015 shelter verification submitted is from [REDACTED] and indicates Petitioner pays \$[REDACTED] rent per month and no utilities. (Department Exhibit A page 2) There are several other documents in evidence, Department Exhibit A pages 3, 4, 12, 13 & 14, which are insufficient as verification of Petitioner having a legal obligation to pay the mortgage on the property or any other property expenses including utility services.

Department Exhibit A page 15 is a DTE Energy payment coupon in Petitioner's name. The document itself does not indicate the date it was printed by DTE or received by the Department. It does indicate the next payment is due on November 20, 2015.

Department Exhibit A pages 17 & 18 was submitted to the Department on January 29, 2016. Page 17 is a Smart Kids Share account statement for the period July 1, 2015 through September 30, 2015 for a joint account of Petitioner and one of her children. The information on the statement shows the last two digits of the account number and shows the only transactions during that period were deposits by the Social Security Administration and cash withdrawals. The top of Page 18 shows Smart Kids Share and a full account number. The last two digits match those on page 17. A section of this page has a print out of electronic funds transfers to 360 Mortgage from "Opportunity Checking 2" between October 30, 2015 and January 28, 2016. The funds transfers are for: \$[REDACTED] on November 17, 2015; \$1,266.80 on December 17, 2015; and \$[REDACTED] on January 27, 2016.

Petitioner feels the shelter expense should be applied to her retroactively. There is nothing in Department policy that provides for a retroactive application of shelter expenses for Food Assistance Program (FAP) benefits. Petitioner's request is not within the scope of authority delegated to this Administrative Law Judge pursuant to a written directive signed by the Department of Human Services Director, which states:

Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations or overrule or make exceptions to the department policy set out in the program manuals.

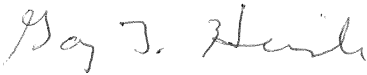
Furthermore, administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940); *Auto-Owners Ins Co v Elchuk*, 103 Mich App 542, 303 NW2d 35 (1981); *Delke v Scheuren*, 185 Mich App 326, 460 NW2d 324 (1990), and *Turner v Ford Motor Company*, unpublished opinion per curium of the Court of Appeals issued March 20, 2001 (Docket No. 223082).

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 acted in accordance with Department policy when it processed Petitioner's report of a change in

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.

GH/nr



Gary Heisler
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]