



RICK SNYDER
GOVERNOR

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

MIKE ZIMMER
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: March 25, 2016
MAHS Docket No.: 16-001167
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Zainab Baydoun

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 17, 2016, from Detroit, Michigan. Petitioner was represented by [REDACTED], her husband. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearing Facilitator.

ISSUE

Did the Department properly calculate Petitioner's Food Assistance Program (FAP) benefits for February 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 was an ongoing recipient of FAP benefits.
2. Petitioner's FAP group has seven members: Petitioner, her husband, and five children ((G), (A), (E), (M) and (L)).
3. On December 26, 2015, Petitioner submitted a completed online redetermination to the Department (Exhibit A, pp. 2-14)
4. In connection with a redetermination, Petitioner submitted two paystubs: one dated January 7, 2016 showing gross income of \$1303.60 and another dated January 21, 2016 showing gross income of \$1327 (Exhibit A, pp. 26-27)

5. On January 26, 2016, the Department sent Petitioner a Notice of Case Action notifying her that her FAP case had been recertified and she was approved for monthly FAP benefits of \$242 (Exhibit A, pp. 28-31)
6. On February 1, 2016, the Department received Petitioner's request for hearing disputing the Department's calculation of her FAP benefits, specifically noting her disagreement with the unearned income budgeting for child support.

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 filed a hearing request on February 1, 2016, disputing the calculation of her FAP benefits. After receiving Petitioner's hearing request, the Department realized that there was an error in the calculation of the child support deduction in Petitioner's FAP budget, recalculated the FAP budget for February 1, 2016 ongoing, and on February 8, 2016, sent Petitioner a Notice of Case Action notifying her that her monthly FAP benefits had increased to \$261 effective February 1, 2016 (Exhibit A, pp. 41-44).

The Department presented a FAP net income budget for February 1, 2016 showing the calculation of the updated FAP budget that was reviewed with Petitioner's husband at the hearing (Exhibit A, pp. 38-40). The FAP budget showed \$2827 in gross monthly earned income and \$1389 in gross monthly unearned income. The Department explained that the earned income calculation was based on the January 7, 2016 and January 21, 2016 paystubs showing \$1303.60 and \$1327, respectively. Because Petitioner receives biweekly pay, the Department acted in accordance with Department policy when it took the average biweekly paycheck (\$1315.30) and multiplied it by 2.15 to arrive at average monthly gross earned income of \$2827.

The Department explained that the \$1389 in unearned income was the gross monthly child support received by the children in the household: \$435 allocated to G and A each and \$173.50 allocated to E, M, and L each. Petitioner's husband did not dispute the child support for G and A, conceding that Petitioner received this income for those two children. To calculate child support income, child support payments received in the past three calendar months are averaged. BEM 505 (July 2015), p. 3. In this case, the child

support consolidated inquiry showed that Petitioner received \$435 for each child in October 2015, November 2015 and December 2015. Therefore, the Department properly budgeted \$870 for gross monthly child support income Petitioner received for G and A.

However, Petitioner's husband contended that the Department improperly included as unearned income \$173.50 for child support for each of E, M, and L because he paid child support out to this ex-wife under the terms of the child support order and did not receive this income. The Department argued that, because E, M, and L lived 50% of the time in the household with Petitioner and her husband, the child support income was properly attributable to the children and included in Petitioner's FAP budget.

Child support is money paid by an absent parent for the living expenses of a child. BEM 503 (October 2015), p. 6. Department policy provides that child support payments received by a custodial party for an adult child or a child no longer living in the home are the other unearned income of the payee as long as the money is not forwarded to the adult/child; if forwarded to the adult/child, enter as the other unearned income of the adult/child. BEM 503, p. 6. Further, in calculating a FAP budget, income includes available income for the benefit month being processed. BEM 505 (July 2015), p. 2.

In this case, because Petitioner's husband paid child support to his ex-wife for E, M, and L, his ex-wife is the payee of any sums paid for child support for E, M and L. There was no evidence that his ex-wife forwarded any of this income back to Petitioner's husband or the children. The funds paid out by Petitioner's husband's gross income to his ex-wife were not available to him. Therefore, the income was the ex-wife's, not Petitioner's husband, and not the children's. Therefore, the Department did not act in accordance with Department policy when it attributed the child support payments Petitioner's husband paid to his ex-wife to the children and included them in Petitioner's FAP net income budget.

The deductions to income were also reviewed with Petitioner's husband. For a seven-person FAP household with earned income, the Department must reduce the household's gross monthly income by the following deductions: the earned income deduction (which is 20% of the household's gross monthly earned income), the standard deduction (based on group size), child care expenses, child support expenses, and excess shelter expenses (based on monthly shelter costs and the applicable utility standard). BEM 554 (October 2015), p. 1; BEM 556 (July 2013), p. 3.

Because 20% of \$2827 is \$566, as shown on the FAP net income budget, the Department properly calculated the earned income deduction. Petitioner's seven member FAP group is eligible for a \$225 standard deduction, as shown on the budget. RFT 255 (October 2015), p. 1. There was no evidence presented that the household had any child care expenses. Therefore, the budget properly showed no deduction for this expense. The excess shelter deduction is based on \$1311 in monthly shelter expenses, which Petitioner's husband confirmed, and the \$539 heat and utility standard,

which is the most beneficial standard available to a client. BEM 554, pp. 14-21; RFT 255, p. 1.

The final deduction was the child support deduction. The Department testified that it took the average non-arrearage payments made by Petitioner's husband in October 2015 (\$403), November 2015 (\$403), and December 2015 (\$697.50) to arrive at the \$501 child support deduction shown on the budget.

Child support expenses are allowed for (i) the amount of court-ordered child support and arrearages paid by the household members to non-household members in the benefit month, (ii) court-ordered third party payments (landlord or utility company) on behalf of a non-household member, and (iii) legally obligated child support paid to an individual or agency outside the household for a child who is now a household member, provided the payments are not returned to the household. BEM 554, p. 6. Expenses are used from the same calendar month as the month for which benefits are being determined and remain unchanged until the FAP group reports a change. BEM 554, p. 3.

In this case, Petitioner's husband pays child support for four children: E, M, L and L.O., a fourth child not in Petitioner's household. Because E, M and L are in his household, his child support deduction for these children is limited to the amount of court-ordered child support made to his ex-wife. The consolidated inquiry shows that the legally obligated child support for E, M and L was \$100.33 each (Exhibit A, p. 21). While Petitioner's husband paid more than this amount for each child in December 2015 (Exhibit A, pp. 18-20), he is limited to a total of \$301 for these three children.

Because L.O. was not in Petitioner's household, the child support deduction for that child includes any court-ordered child support and arrearages Petitioner's husband paid to his ex-wife in December 2015. The consolidated inquiry showed that Petitioner's husband was legally obligated to pay \$158 in court-ordered child support but he paid \$319 in December 2015. Therefore, the full \$319 is considered in calculating the child support deduction. When the permitted child support payment for E, M, L, and L.O. are added together, the child support deduction totals \$620. Therefore, the Department did not act in accordance with Department policy when it calculated the child support deduction.

Because the Department improperly included unearned income and improperly calculated the child support deduction in calculating Petitioner's FAP budget, 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 monthly FAP benefits.

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



ZB/tlf

Zainab Baydoun
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

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