



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.: 16-001520
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 24, 2016 from Detroit, Michigan. The Petitioner represented herself. The Department of Health and Human Services (Department) was represented by [REDACTED], Assistance Payment Worker and [REDACTED], Family Independence Manager.

ISSUE

Did the Department properly calculate the amount of Petitioner's Food Assistance Program (FAP) benefits for the month of December 2015?

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. On November 10, 2015, the Department sent Petitioner a Notice of Case Action advising her that effective December 1, 2015, her FAP benefits would be decreased to \$447 monthly. (Exhibit A)
3. Petitioner received her last check from her employment at [REDACTED] on November 12, 2015. (Exhibit B; Exhibit D)

4. Petitioner's FAP case closed effective December 31, 2015, based on a failure to complete a semi-annual review.
5. Petitioner reapplied for FAP benefits and was approved for the period of January 5, 2016, ongoing. (Exhibit C)
6. On January 29, 2016, Petitioner requested a hearing disputing the Department's calculation of her FAP benefits for the month of December 2015.

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 this case, Petitioner testified that she requested a hearing to dispute the Department's calculation of her FAP benefits for the month of December 2015. The Department stated that Petitioner became employed on August 25, 2015 and received her first paystub on September 3, 2015. The Department stated that the income was not budgeted until December 2015, which caused a decrease in Petitioner's FAP allotment. The Department did not provide a FAP EDG Net Income Results Budget, however, the Budget Summary from the November 10, 2015, Notice of Case Action was reviewed.

Petitioner confirmed that the amounts reflected on the budget for her son's unearned income, the group size of six, housing costs, heat and utility standard, and standard deduction were all accurate. The only dispute was with respect to Petitioner's earned income.

All countable earned and unearned income available to the client and group must be considered in determining a client's eligibility for program benefits. BEM 500 (January 2016), pp. 1 – 5. The Department determines a client's eligibility for program benefits based on the client's actual income and/or prospective income. Prospective income is income not yet received but expected. BEM 505 (July 2015), pp. 1-2. In prospecting income, the Department is required to use income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month, discarding any

pay if it is unusual and does not reflect the normal, expected pay amounts. BEM 505, p. 5. A standard monthly amount must be determined for each income source used in the budget. BEM 505, p. 7. Income received weekly is converted to a standard amount by multiplying the average of the weekly pay amounts by the 4.3 multiplier. BEM 505, pp. 7-8. An employee's wages include salaries, tips, commissions, bonuses, severance pay and flexible benefit funds not used to purchase insurance. The Department counts gross wages in the calculation of earned income. BEM 501 (July 2014), pp. 6-7.

The Department concluded that Petitioner had earned income of \$1339 which it testified consisted of her weekly earnings from her employment as reported on through paystubs provided in October 2015 and a verification of employment form. Specifically, the Department stated that it considered: (i) \$299.25 paid on October 1, 2015; (ii) \$248.22 paid on October 8, 2015; (iii) \$309.06 paid on October 15, 2015; (iv) \$324.99 paid on October 22, 2015; and (v) \$247.77 paid on October 29, 2015. (Exhibit B). Although Petitioner confirmed that the income reflected on the paystubs for October 2015 were accurate, in consideration of the above referenced prospective budgeting policy, the Department incorrectly calculated the earned income to be \$1339, based upon the income information it testified was considered.

Additionally, Petitioner stated that she lost her employment in November 2015 and that she did not continue to receive the income. Petitioner stated that she reported to the Department on November 18, 2015, that she was no longer employed and that her employer faxed the Department a letter on that day. The letter referenced by Petitioner was reviewed at the hearing and the Department stated that it was unclear when the Department received the letter, as despite being dated November 18, 2015, it could have been received in connection with the subsequent application.

BEM 505 provides that for stopping income, the Department is to budget the final income expected to be received in the benefit month. The Department will use the best available information to determine the amount of the last check expected and to use information from the source and from the client. The Department is to remove stopped income from the budget for future months. BEM 505, p. 7. A review of the evidence establishes that Petitioner reported to the Department on November 18, 2015, that she was no longer employed as of November 8, 2015, and that she received her last paycheck on November 12, 2015. (Exhibit B; Exhibit D). Thus, the Department should not have continued to budget Petitioner's earned income for the month of December 2015, as she timely reported she was no longer employed.

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 based on the errors in the calculation of earned income, the Department did not act in accordance with Department policy when it calculated Petitioner's FAP benefits for December 2015.

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 December 1, 2015, ongoing; and
2. Issue FAP supplements to Petitioner from December 1, 2015, ongoing, for FAP benefits she was eligible to receive but did not, if any, in accordance with Department policy.



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

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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