



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 31, 2016
MAHS Docket No.: 16-001863
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 28, 2016, from Detroit, Michigan. The Petitioner was represented by himself. The Department of Health and Human Services (Department) was represented by [REDACTED] Eligibility Specialist.

ISSUE

1. Was the Petitioner's hearing request timely?
2. Did the Department properly calculate the Petitioner's Food Assistance Program (FAP) benefits?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Petitioner was an ongoing recipient of FAP benefits and currently receives \$ [REDACTED] monthly.
2. The Petitioner pays rent of \$ [REDACTED] per month and pays for his heating and cooling with electricity.

3. The Department determined that the Petitioner's earned income was \$ [REDACTED] and his unearned income, confirmed by the Petitioner was \$ [REDACTED]. The Petitioner has a FAP group of one member.
4. The Department requested a verification of wages from the Petitioner's employer after receiving a notice of Wage Match. The wage verification indicated that the Petitioner was employed and received \$ [REDACTED] biweekly and noted that Petitioner was an adjunct teacher and is employed as needed.
5. The Petitioner requested a timely hearing February 17, 2016, requesting his FAP benefits be reviewed.

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, the undersigned was advised that the first issue to be resolved was whether the Petitioner's hearing request was timely. In this case, the Petitioner was seeking a review of his FAP benefit calculation and a determination as to how the income was determined. A recipient of FAP may request a hearing regarding these issues at any time; and thus, the hearing request is timely. Any error in FAP benefit calculation can only be adjusted back 90 days, which is the amount of time one has to request a hearing. BAM 600, (October 1, 2015), p. 6. Therefore, it is determined that the Petitioner's hearing request dated February 17, 2016, is timely.

The Petitioner has sought a review of his FAP benefits due to his concern that his benefits were not adjusted even though his income ended. Although the FAP benefits were under review, no determination regarding the benefits was ever completed. At the hearing, the FAP budget for Petitioner's current benefits was reviewed. The Petitioner was requested to have his employer complete a Wage Verification for his Employment, and the employer's wage verification was what the Department relied on to calculate the Petitioner's FAP benefits. The Petitioner currently receives \$ [REDACTED] monthly in FAP benefits.

A Verification of Employment by Petitioner's employer was completed and indicated that Petitioner was employed as an adjunct teacher and had received biweekly pay of \$[REDACTED]. The note on the wage verification indicated that adjunct teachers are employed as needed on a semester-to-semester basis. Based on the verification, the Department calculated the income and determined the Petitioner received \$[REDACTED] monthly and unearned income of \$[REDACTED] from his mother as a contribution to his living expenses. It is determined that the Department was entitled to rely on this information even though it did not accurately reflect that the Petitioner was not working at the time due to being an adjunct professor. However, the error in providing the information was not the Department's but the employer's.

The Petitioner, at the time the budget was calculated, was paid biweekly. Department policies found in BEM 505 require that the average weekly or biweekly check be determined by adding the checks together and dividing by number of checks. Once this amount is determined, it is either multiplied by 2.15, if the checks are earned biweekly, or 4.3 if the checks are earned weekly. Applying this formula is the appropriate way to determine gross earned income. BEM 505 (January 1, 2014) p. 1. The Department correctly determined, based upon the information available provided by Petitioner's employer, that his earned income was \$[REDACTED] biweekly. The monthly income is determined by taking the \$[REDACTED] and multiplying it by 2.15, which equals \$[REDACTED]. BEM 505, (January 1, 2014) p. 1. Therefore, the Department's determination of the earned income amount is correct.

All countable earned and unearned income available to the client must be considered in determining the Petitioner's eligibility for program benefits. BEM 500 (July 2014), pp. 1-4. The Department considers the gross amount of money earned from employment in the calculation of earned income for purposes of FAP budgeting. BEM 503 (July 2014), pp. 31-32.

The deductions to income on the net income budget were also reviewed. Petitioner's FAP group consists of three members. BEM 550 (February 2014), pp. 1-2.

- Dependent care expense.
- Excess shelter.
- Court ordered child support and arrearages paid to non-household members.
- Standard deduction based on group size.
- An earned income deduction equal to 20% of any earned income.

BEM 554 (October 2014), p. 1; BEM 556 (July 2013), p. 3.

The food assistance budget was reviewed, and it was determined that the Department properly calculated the income to be \$[REDACTED]. The Department correctly applied an earned income deduction of 20% to the earned income for a deduction of \$[REDACTED]. The Department also deducted a standard deduction of \$[REDACTED] applicable to an FAP group of one member. Once the deductions were computed, the Petitioner had adjusted

gross income of \$ [REDACTED] (\$ [REDACTED] + \$ [REDACTED] = \$ [REDACTED] X 20% = [REDACTED] =
\$ [REDACTED] - \$ [REDACTED] = \$ [REDACTED]

Thereafter, the excess shelter calculation was reviewed. The excess shelter is determined by adding rent and the heat and utility allowance together to get total housing expense. RFT 255, (October 1, 2015) p.1. The Petitioner confirmed that he pays a monthly rent of \$ [REDACTED]. The Petitioner was given a telephone deduction of \$ [REDACTED] and a non-heat electric standard deduction of \$ [REDACTED] for a total shelter amount of \$ [REDACTED]. At the hearing, the Petitioner credibly testified that he had provided the Department his electricity bill and that he heats with either a space heater or a wall heater provided by his landlord, which also has a wall air-conditioner, which he also testified that he uses. After reviewing the policy applicable to eligible FAP expenses for housing, it is determined that the Department erred when it calculated the excess shelter deduction.

Department policy found in BEM 554 provides:

A FAP group which has a heating expense or contributes to the heating expense separate from rent, mortgage or condominium/maintenance payments must use the h/u standard. BEM 554, (October 1, 2015) p. 16.

FAP groups who pay for cooling (including room air conditioners) are eligible for the h/u standard if they verify they have the responsibility to pay for non-heat electric. BEM 554, p. 16.

FAP groups who are at redetermination or have their first case change and have received a HHC in an amount greater than \$20 in the certification month or in the immediately preceding 12 months prior to the certification month are eligible for the h/u standard.

Verification

Verify receipt of HHC at application, redetermination or when a change is reported.

Verification Sources

Acceptable verification sources include, but are not limited to:

- Bridges inquiry. (HHC Approved Client Inquiry).
- Letter from provider.
- Collateral contact with provider.
- Copy of HHC warrant. BEM 554 p. 18

In this case, the Petitioner has already verified that he uses a room air-conditioner and has provided the Department sufficient verification as he provided an electric bill. Therefore, it is determined that the Petitioner is eligible for a full heat-and-utility deduction of \$ [REDACTED] rather than the \$ [REDACTED] telephone allowance and \$ [REDACTED] non-heat utility expense he was given. RFT 255 (October 1, 2015) p.1. The FAP benefit amount is determined to be incorrect.

Given that this analysis was done based on information obtained in 2015, the Department and the Petitioner should discuss the current situation with respect to Petitioner's income, which is not addressed by this decision.

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 the Petitioner's excess shelter expense and therefore the FAP benefit amount is incorrect.


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. The Department shall recalculate the Petitioner's FAP benefits for the months of December 2015, January 2016 and February 2016 ongoing and shall include a heat-and-utility allowance of \$ [REDACTED] when calculating the excess shelter deduction.
2. The Department shall issue an FAP supplement to the Petitioner that he is eligible to receive if any in accordance with Department policy.

LMF/jaf



Lynn M. Ferris

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]

cc:

[REDACTED]