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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: April 4, 2016
MAHS Docket No.: 16-001896
Agency No.: ██████████
Petitioner: ██████████

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 30, 2016, from Detroit, Michigan. The Petitioner represented herself at the hearing. The Department of Health and Human Services (Department) was represented by ██████████, Family Independence Manager and ██████████, Assistance Payment Worker.

ISSUE

Did the Department properly deny Petitioner's Food Assistance Program (FAP) application on the basis that her income exceeded the limit for FAP purposes?

FINDINGS OF FACT

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

1. On or around February 12, 2016, Petitioner submitted an application for FAP benefits.
2. Petitioner's FAP group has seven household members.
3. Petitioner is employed and is paid twice monthly.
4. Petitioner's husband is also employed and is paid biweekly.
5. Two of Petitioner's children are recipients of SSI.

6. Petitioner receives child support for one of her children in the amount of \$50 monthly.
7. After processing the application using the information contained in Petitioner's application, the Department sent Petitioner a Notice of Case Action dated February 12, 2016, advising her that the FAP application was denied based on excess income. (Exhibit A)
8. On February 19, 2016, Petitioner requested a hearing disputing the denial of her FAP application.

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 19, 2016, disputing the denial of her FAP application due to excess income. After receiving Petitioner's hearing request, the Department realized that there was an error in the income information in Bridges and reprocessed Petitioner's FAP eligibility. The Department stated that after updating the income and employment information, Petitioner was still ineligible for FAP based on excess income. The Department presented a FAP EDG Net Income Results Budget in support of its testimony that Petitioner's group had excess net income for FAP purposes. (Exhibit B).

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 biweekly is converted to a standard amount by

multiplying the average of the biweekly pay amounts by the 2.15 multiplier. The Department will add amounts received twice a month. 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 \$3026 which it testified consisted of her earnings from employment and her husband's earnings from employment. Specifically, the Department considered biweekly pay for Petitioner's husband of \$350.85 paid on January 5, 2016, and \$460.72 paid on January 19, 2016. Petitioner confirmed that her husband's pay information was correct. With respect to Petitioner's earnings, the Department stated that it relied on the information contained in the Work Number, specifically that Petitioner is paid twice a month and considered: (i) \$942.42 paid on December 10, 2015; (ii) \$799.35 paid on December 23, 2015; (iii) \$1122.05 paid on January 8, 2016; (iv) \$926.49 paid on January 25, 2016; and (v) \$967.49 paid on February 10, 2016. (Exhibit C). Petitioner disputed some of the income information relied on by the Department for her earnings and presented her actual paystubs during the hearing in support of her testimony. (Exhibit 1).

Upon further review of the documents presented and in consideration of the above referenced prospective budgeting policy, the Department did not properly calculate Petitioner's earned income, as the total amount of earned income for Petitioner and her husband does not equal \$3026.

The Budget shows unearned income of \$1423 which it testified consisted of \$719.67 in SSI for Petitioner's son, \$659.70 in SSI for Petitioner's daughter, and \$50 in monthly child support for one of Petitioner's children. The Department considers the gross amount of money earned from SSI in the calculation of unearned income for purposes of FAP budgeting. BEM 503 (October 2015), pp.31-32. Additionally, child support is money paid by an absent parent(s) for the living expenses of children and is considered unearned income. The total amount of court-ordered direct support (which is support an individual receives directly from the absent parent or the Michigan State Disbursement Unit (MiSDU)) is counted as unearned income and is considered in the calculation of a client's gross unearned income. When prospectively budgeting unearned income from child support, the Department is to use the average of child support payments received in the past three calendar months, unless changes are expected, excluding any unusual amounts or those not expected to continue. BEM 505, pp. 3-4. Petitioner confirmed that the amounts relied upon by the Department for unearned income were correct, thus, the Department properly calculated the unearned income.

The deductions to income on the net income budget were also reviewed. Petitioner's children are senior/disabled/veteran (SDV) members of the FAP group. BEM 550 (October 2015), pp. 1-2. Groups with one or more SDV members are eligible for the following deductions to income:

- Dependent care expense.
- Excess shelter.
- Court ordered child support and arrearages paid to non-household members.
- Medical expenses for the SDV member(s) that exceed \$35.
- Standard deduction based on group size.
- An earned income deduction equal to 20% of any earned income.

BEM 554 (October 2015), p. 1; BEM 556 (July 2013), p. 3.

In this case, the Department determined that the earned income deduction was \$606; however, as discussed above, the Department improperly calculated Petitioner's earned income. There was no evidence presented that the group had any out of pocket medical, dependent care or child support expenses. Therefore, the budget properly did not include any deduction for medical expenses, dependent care expenses, or child support. Based on her confirmed seven-person group size, the Department properly applied the \$225 standard deduction. RFT 255 (October 2015), p. 1. The excess shelter deduction summary shows that the Department considered monthly rent of \$500, which Petitioner disputed. Petitioner stated and the Department confirmed that on the February 2016, application Petitioner reported housing expenses of \$775. Although the Department stated that it did apply housing costs of \$775 in its determination, the budget provided by the Department during the hearing shows housing expenses of \$500. (Exhibit B, p. 3). The Department properly applied a \$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 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 because of the errors in the calculation of Petitioner's earned income and housing expenses, the Department did not act in accordance with Department policy when it denied Petitioner's FAP application based on excess net income.

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. Register and process Petitioner's February 12, 2016, FAP application;
2. Issue FAP supplements to Petitioner for any FAP benefits she was entitled to receive but did not from February 12, 2016, ongoing, in accordance with Department policy; and
3. Notify Petitioner in writing of the Department's 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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