



RICK SNYDER
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.: 16-002046
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 31, 2016, from Detroit, Michigan. The Petitioner appeared for the hearing and represented himself. The Department of Health and Human Services (Department) was represented by ██████████, Hearings Facilitator.

ISSUE

Did the Department properly calculate the amount of 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. Petitioner was an ongoing recipient of FAP benefits.
2. In connection with a redetermination, Petitioner's eligibility to receive FAP benefits was reviewed.
3. On an unverified date, the Department notified Petitioner that his FAP benefits would be decreasing to \$311, effective February 1, 2016.
4. On February 23, 2016, Petitioner requested a hearing disputing the Department's actions.

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 disputed the decrease in his FAP benefit allotment after the processing of his redetermination was completed. The Department testified that in connection with the redetermination, Petitioner submitted a 2014 tax return to verify his self-employment income. The Department stated that it had previously been incorrectly budgeting Petitioner's earnings from self-employment and that after the income was correctly budgeted, Petitioner's FAP benefits decreased from \$649 to \$311, effective February 1, 2016. The Department presented a FAP EDG Net Income Results Budget which was reviewed to determine if the Department properly calculated Petitioner's FAP benefits.

Additionally, 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 concluded that Petitioner had self-employment earnings of \$2246. The amount of self-employment before any deductions is called total proceeds. Countable income from self-employment equals (i) the total proceeds of self-employment **minus** (ii) allowable expenses of producing the income, which is the higher of 25 percent of total proceeds or actual expenses if the client chooses to claim and verify the expenses. BEM 502 (October 2015), p. 3.

Self-employment is verified as follows:

Primary source: Income tax return is used provided that (i) the client has not started or ended self-employment, or received an increase/decrease in income, etc., (ii) the tax return is still representative of future income, and (iii) the client filed a tax return.

Secondary source: DHS-431, Self-Employment Statement, with all income receipts to support claimed income.

Third source: DHS-431, Self-Employment Statement, without receipts. When this verification source is used, a Front End Eligibility (FEE) referral is required and the case may not open until the FEE investigation is completed.

BEM 502, p. 7. The Department stated that it relied on the information contained in Petitioner's 2014 Schedule C Form 1040 Profit or Loss from Business (Schedule C) on which gross receipts/sales of \$35,951 is reflected. A review of the Schedule C indicates that Petitioner's business is a sole proprietorship. (Exhibit 1). The Department testified that it divided the income from gross receipts or sales of \$35,951 by 12 and determined that Petitioner had gross monthly self-employment proceeds of \$2995. The Department stated that it determined that Petitioner had allowable expenses of 25% of his total proceeds, resulting in countable income from self-employment in the amount of \$2246.

At the hearing, Petitioner disputed the gross earnings used by the Department and stated that his gross income was not \$35,951, as he had expenses reported on his Schedule C. (Exhibit 1). Petitioner stated that his gross income after deductions according to the Schedule C is \$27,800 and that his net income was \$15,586. Petitioner indicated that the expenses reflected on his Schedule C are greater than the 25% applied by the Department. Although Petitioner testified that he was informed by the Department to submit his Schedule C for his expenses and not to submit receipts, Department policy provides that to verify self-employment expenses for all programs, except Medicaid, the Department is to use the DHS-431, Self-Employment Statement, with receipts. BEM 502, pp.7-8.

The Department confirmed that it did not send Petitioner a DHS-431 with the redetermination and stated that it instructed Petitioner to submit the Schedule C. A review of the verification checklists establishes that with respect to self-employment verifications, Petitioner was instructed to submit one of the following: recent business receipts; recent accounting or other business records; or a recent tax return, which he did. (Exhibit A, pp. 15-18). A DHS-431 was not included in the request for verifications, thus, the Department did not establish that it calculated Petitioner's self-employment expenses in accordance with Department policy. As such, the self-employment income was also improperly calculated.

The deductions to income on the net income budget were also reviewed. Petitioner's group is eligible for the following deductions to income:

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

In this case, the Department determined that Petitioner's earned income deduction was \$450, however, because the income from self-employment was improperly calculated, it follows that the earned income deduction is also incorrect. There was no evidence presented that Petitioner's group had any out of pocket dependent care or child support expenses. Therefore, the budget properly did not include any deduction for dependent care expenses or child support. Based on the confirmed four-person group size, the Department properly applied the \$167 standard deduction. RFT 255 (October 2015), p. 1. The Department determined that Petitioner was eligible for an excess shelter deduction of \$504, however, the Department failed to include the excess shelter deduction summary and was unable to identify the amount considered for Petitioner's housing costs and utility expenses, if any. Petitioner stated that he is responsible for \$800 in monthly rent and utilities such as gas, electric, and water. BEM 554, pp. 16-19; 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 self-employment income discussed above, the Department did not act in accordance with Department policy when it calculated the amount of Petitioner's FAP benefits effective February 1, 2016.

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 FAP supplements to Petitioner from February 1, 2016, ongoing, in accordance with Department policy; 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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