



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: April 21, 2016  
MAHS Docket No.: 16-003212  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Alice C. Elkin**

### **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 April 13, 2016, from Detroit, Michigan. Petitioner appeared and represented himself. His wife [REDACTED] appeared as a witness. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearing Facilitator.

### **ISSUE**

Did the Department properly deny Petitioner's applications for State Emergency Relief (SER) assistance with electrical payment?

Did the Department properly calculate 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 and his wife are ongoing recipients of FAP benefits.
2. Petitioner and his wife are the only members of their household.
3. Petitioner and his wife are both disabled.

4. Petitioner receives \$1094 in gross monthly Retirement, Survivors and Disability Insurance (RSDI) benefits based on his disability; his wife receives \$495 in gross monthly RSDI benefits based on her disability. Petitioner also receives a \$114 gross monthly pension benefit.
5. The Department pays Petitioner's and his wife's monthly Part B Medicare premium.
6. On January 7, 2016, Petitioner applied for SER assistance with outstanding electrical bills, and the Department sent a SER Decision Notice on January 8, 2016 denying the application.
7. On February 16, 2016 and March 2, 2106, Petitioner reapplied for SER assistance; both applications were denied, the first in a February 19, 2016 SER Decision Notice and the second in a March 3, 2016 SER Decision Notice (Exhibit A), on the basis that the income/asset copayment exceeded the amount necessary to resolve the emergency.
8. On March 3, 2016, the Department sent Petitioner a Notice of Case Action notifying him that his FAP benefits were increasing to \$102 monthly for April 1, 2016 to July 31, 2016 (Exhibit B).
9. On March 10, 2016, the Department received Petitioner's request for hearing disputing the Department's denial of his SER applications and the calculation of his FAP benefits.

### **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).

#### **SER**

The State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by the Department (formerly known as the Department of Human Services) pursuant to MCL 400.10 and Mich Admin Code, R 400.7001-.7049.

Petitioner requested a hearing concerning the denial of his SER applications for assistance with his outstanding electrical bills. Petitioner had submitted three applications: on January 7, 2016; February 16, 2016; and March 2, 2016. According to the Department, the first application was denied because Petitioner had not listed any amount as outstanding. The second two applications were denied because Petitioner's

income/asset copayment was greater than the amount necessary to resolve the emergency.

At the hearing, the Department clarified that the second two applications had been denied because Petitioner's asset copayment made him ineligible for SER assistance. In determining a client's eligibility for energy service assistance, the Department must budget the assets of all household members. ERM 301 (October 2015), p. 4. If the client has non-exempt cash assets in excess of \$50, the client will have an asset copayment in an amount equal to the cash in excess of \$50. ERM 208 (October 2015), p. 1; ERM 205 (October 2015), p. 1. Cash assets include amounts on deposit in a financial institution, excluding the budgetable portion of income deposited into the account. ERM 205, pp 2-3. An asset copayment cannot be reduced or waived. ERM 208, p. 1.

At the hearing, the Department acknowledged that the February 16, 2016 and March 2, 2016 applications were denied in error because the Department had continued to improperly budget a one-time lump sum of \$1911.79 that was no longer available to Petitioner. Because there was no evidence that Petitioner had cash assets in excess of \$50 and the Department did not present any evidence of other available assets or excess income, the Department did not act in accordance with Department policy when it denied Petitioner's February 16, 2016 and March 2, 2016 applications on the basis that his income/asset copayment exceeded the amount necessary to resolve the emergency.

### **FAP Calculation**

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.

The Department notified Petitioner in a March 3, 2016 Notice of Case Action that, effective April 1, 2016, he would receive \$102 in monthly FAP benefits. On March 10, 2016 Petitioner requested a hearing concerning the calculation of his group's FAP benefits.

The Department presented a FAP net income budget showing the calculation of FAP benefits for April 2016 ongoing that was reviewed with Petitioner and his wife at the hearing. In calculating monthly FAP benefits, the Department begins with the FAP household's gross income. The net income budget showed that Petitioner's household received \$1703 in gross monthly unearned income, which the Department testified was the sum of Petitioner's \$1094 RSDI, his wife's \$495 RSDI, and Petitioner's monthly \$114.12 pension. Petitioner did not dispute any of the income figures. Therefore, the Department properly calculated Petitioner's gross monthly income.

Because Petitioner and his wife receive RSDI income on the basis of disability, they are each senior/disabled/veteran (SDV) members of their FAP group. See BEM 550 (October 2015), p. 1. In determining net income for a two-person FAP household with unearned income and SDV members, the Department must reduce the household's gross monthly unearned income by the following deductions: the standard deduction (based on group size), child care expenses, child support expenses, verified medical expenses in excess of \$35, 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.

The budget shows that the Department applied the \$154 standard deduction, which is the standard deduction applicable to a two-person FAP group. RFT 255 (October 2015), p. 1. Petitioner acknowledged that he and his wife had no child care or child support expenses; therefore, the Department properly did not apply any deduction for those expenses.

The two remaining deductions available to Petitioner were the excess shelter deduction and the medical expense deduction. The excess shelter deduction is based on the client's monthly shelter expenses and the applicable utility standard for any utilities the client is responsible to pay. BEM 556, pp. 4-5. The excess shelter deduction budget in this case shows that the Department applied the \$539 heat and utility (h/u) standard, which is the most beneficial utility standard available to a client. BEM 554, pp. 14-20; RFT 255 (October 2015), p. 1. The monthly housing expenses identified in the excess shelter deduction was \$805. At the hearing, Petitioner's wife testified that the monthly rent was actually \$844 but could not confirm that the increased rent had been previously reported to the Department. Therefore, the Department, which testified that it relied on a lease on file showing monthly rent of \$805, acted in accordance with Department policy when it used \$805 in calculating monthly rent for April 1, 2016 ongoing. While the Department acknowledged at the hearing that Petitioner had reported the \$805 rent amount on September 29, 2015 and that the reported change should have affected November 1, 2015 ongoing benefits, because the hearing request submitted by Petitioner was tied to the April 2016 budget, the prior months' rent was not at issue. Based on rent of \$805 and applying the h/u standard of \$539, the Department properly calculated the excess shelter deduction at \$613.

The net income budget showed a medical expense deduction of \$86. At the hearing, the Department testified that the expenses shown on the budget were incurred in 2009 and 2011 and it had erroneously continued to budget those expenses. Ongoing medical expenses can be budgeted for a benefit period. BEM 554, p. 8. One-time-only expenses can be budgeted over a client's remaining benefit period. BEM 554, pp. 8-9. In this case, any expenses incurred in 2009 or 2011 were outside Petitioner's current FAP certification period, and therefore could not be used in connection with Petitioner's current FAP net income budget. Petitioner and his wife acknowledged that they did not have any out-of-pocket medical expenses that exceeded \$35 monthly. Although Petitioner and his wife were not eligible for a medical deduction, the Department

acknowledged that Petitioner had not been notified of a removal of the medical deduction and the budgets upon which Petitioner's FAP benefits were based continued to include the medical deduction. Petitioner is advised that future FAP benefits may be affected by the removal of the medical deduction.

When Petitioner's household's gross monthly income of \$1703 is reduced by the \$154 standard deduction, \$86 medical expense deduction, and \$613 excess shelter deduction the household received at the time the April 2016 budget was calculated, Petitioner's household's net income is \$850. Based on a FAP group size of two and net income of \$850, Petitioner was eligible to receive \$102 in monthly FAP benefits. RFT 260 (October 2015), p. 11.

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 acted in accordance with Department policy when it calculated Petitioner's FAP benefits and did not act in accordance with Department policy when it denied his February 16, 2016 and March 2, 2016 SER applications.

### **DECISION AND ORDER**

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to Petitioner's FAP calculation and **REVERSED IN PART** with respect to denial of his SER applications.

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. Reregister and reprocess Petitioner's February 16, 2016 and March 2, 2016 SER applications;
2. Issue supplements to Petitioner's providers for SER benefits Petitioner is eligible to receive; and
3. Notify Petitioner in writing of its SER decision.



ACE/tlf

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**Alice C. Elkin**  
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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