



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: April 27, 2016
MAHS Docket No.: 16-003591
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Eric Feldman

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 20, 2016, from Detroit, Michigan. The Petitioner was represented by [REDACTED] (Petitioner). The Department of Health and Human Services (Department) was represented by [REDACTED], Assistant Payment Specialist.

ISSUE

Did the Department properly reduce Petitioner's Food Assistance Program (FAP) allotment to the amount of \$22 effective April 1, 2016?

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 is an ongoing recipient of FAP benefits.
2. On [REDACTED], the Department sent Petitioner a Notice of Case Action notifying her that her FAP benefits decreased to \$22 effective [REDACTED]. See Exhibit A, p. 6.
3. On [REDACTED], Petitioner filed a hearing request, protesting the decrease in her FAP allotment. See Exhibit A, p. 2.

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 the present case, the Department presented the April 2016 FAP budget to determine if the Department properly reduced Petitioner's FAP benefits. See Exhibit B, pp. 1-3.

First, it was not disputed that the certified group size is one and that Petitioner is a senior/disabled/disabled veteran (SDV) member.

Second, the Department calculated Petitioner's gross unearned income to be \$796, which consisted of her Retirement, Survivors and Disability Insurance (RSDI) income. See Exhibit B, p. 1. During the hearing, Petitioner testified that her net income that she receives for her RSDI income is \$642 after the Social Security Administration (SSA) deducts \$50 from each check due to an overpayment and approximately \$104 for her Medical Part B premium.

Based on the above information, an issue arose as to whether to include the overpayment in the calculation of her gross income.

The Department counts the gross benefit amount of RSDI income as unearned income. BEM 503 (October 2015 and April 2016), p. 28. Verification of RSDI income include recent check stub(s), State On-Line Query (SOLQ), etc...See BEM 503, pp. 40-41.

Moreover, BEM 500, defines gross income as the amount of income before any deductions such as taxes or garnishments. BEM 500 (January 2015), p. 4. BEM 500 further states that amounts deducted by an issuing agency to recover a previous overpayment or ineligible payment are not part of gross income. BEM 500, p. 6. These amounts are excluded as income. BEM 500, p. 6. Except, the following overpayment amounts must be included in gross income:

- Any portion of an overpayment (that is normally countable) if the original payment was excluded income when received.
- Cash assistance recoupment amounts due to Intentional Program Violation (IPV) are automatically counted for FAP in Bridges.

- Supplemental Security Income (SSI) amounts recouped due to IPV are included in countable gross income for cash assistance programs and FAP.

IPV means there is a finding of fraud or an agreement to repay in lieu of prosecution. Do not exclude recouped SSI when IPV information is volunteered by the SSI recipient or other reliable source. Do not initiate any contacts to obtain this information.

BEM 500, p. 6.

Based on the foregoing information and evidence, the Department failed to satisfy its burden of showing that it properly calculated Petitioner's unearned income. Petitioner alleges that SSA deducts \$50 from each of her paychecks due to an overpayment. The burden is on the Department to show that it properly calculated her gross unearned income. The Department failed to present a SOLQ, which is a computer data exchange with the Social Security Administration (SSA) that assist in the verification of Social Security numbers (SSNs), Retirement, Survivors and Disability Insurance (RSDI), Supplemental Security Income (SSI) and Medicare benefits. See BAM 801 (July 2015), pp. 1-4. If the Department presented this verification, the undersigned could have verified if in fact an overpayment occurred. However, Petitioner also failed to provide any documented evidence showing that SSA deducts an overpayment from her income. Nonetheless, as the burden is on the Department, the Department will do the following: (i) initiate verification of Petitioner's unearned income to determine if SSA deducts an overpayment from her income; and (ii) if verified, determine if the overpayment should be excluded from the gross income. It should be noted that, if verified, relying solely on Petitioner's testimony, it appears that Petitioner's overpayment should be excluded from the gross income. See BEM 500, p. 6.

Third, the Department properly applied the \$154 standard deduction applicable to Petitioner's group size of one. RFT 255 (October 2015), p. 1.

Fourth, the Department provided Petitioner with a \$70 medical deduction. See Exhibit B, p. 1. Policy states that for groups with one or more SDV member, the Department allows medical expenses that exceed \$35. BEM 554 (October 2015), p. 1. Thus, any allowable medical expenses that exceed \$35, can be included in the calculation of her medical deduction. See BEM 554, pp. 9-11. Because Petitioner was responsible for her \$105 (approximate) Medicare premium, after excluding the first \$35 per policy, the Department properly calculated her medical expense deduction to be \$70 (\$105 Medicare premium minus \$35 threshold).

It should be noted that allowable medical expenses include actual costs of transportation and lodging necessary to secure medical treatment or services. BEM 554, p. 10. Petitioner indicated she had such a medical expense, but did not notify the Department until this hearing. Thus, the Department properly did not include this additional medical expense because it was not reported by the Petitioner until this hearing. See BEM 554, p. 11 (The Department verifies allowable medical expenses

including the amount of reimbursement, at initial application and redetermination. The Department verifies reported changes in the source or amount of medical expenses if the change would result in an increase in benefits).

Fifth, the Department presented Petitioner's Excess Shelter Deduction budget (shelter budget) for April 2016. See Exhibit B, p. 3. The shelter budget indicated Petitioner's housing expenses were \$132, which she did not dispute. See Exhibit B, p. 3. Also, Petitioner's shelter budget showed that she was not receiving the \$539 heat and utility (h/u) standard. See Exhibit B, p. 3. Instead, the shelter budget showed that Petitioner only receives the telephone standard of \$33. RFT 255, p. 1 and see Exhibit B, p. 3.

For groups with one or more SDV members, the Department uses excess shelter. See BEM 554, p. 1. In calculating a client's excess shelter deduction, the Department considers the client's monthly shelter expenses and the applicable utility standard for any utilities the client is responsible to pay. BEM 556 (July 2013), pp. 4-5. The utility standard that applies to a client's case is dependent on the client's circumstances. The mandatory h/u standard, which is currently \$539 and the most advantageous utility standard available to a client, is available only for FAP groups (i) that are responsible for heating expenses separate from rent, mortgage or condominium/maintenance payments; (ii) that are responsible for cooling (including room air conditioners) and verify that they have the responsibility for non-heat electric; (iii) whose heat is included in rent or fees if the client is billed for excess heat by the landlord, (iv) who have received the home heating credit (HHC) in an amount greater than \$20 in the current month or the immediately preceding 12 months, (v) who have received a Low-Income Home Energy Assistance Act (LIHEAP) payment or a LIHEAP payment was made on his behalf in an amount greater than \$20 in the current month or in the immediately preceding 12 months prior to the application/recertification month; (vi) whose electricity is included in rent or fees if the landlord bills the client separately for cooling; or (vii) who have any responsibility for heating/cooling expense (based on shared meters or expenses). BEM 554, pp. 16-20 and RFT 255, p. 1.

To show responsibility for heating and/or cooling expenses, acceptable verification sources include, but are not limited to, current bills or a written statement from the provider for heating/cooling expenses or excess heat expenses; collateral contact with the landlord or the heating/cooling provider; cancelled checks, receipts or money order copies, if current as long as the receipts identify the expense, the amount of the expense, the expense address, the provider of the service and the name of the person paying the expense; DHS-3688 shelter verification; collateral contact with the provider or landlord, as applicable; or a current lease. BEM 554, pp. 16-20. For groups that have verified that they own or are purchasing the home that they occupy, the heat obligation needs to be verified only if questionable. BEM 554, p. 16.

FAP groups not eligible for the mandatory h/u standard who have other utility expenses or contribute to the cost of other utility expenses are eligible for the individual utility standards that the FAP group has responsibility to pay. BEM 554, p. 19. These include the non-heat electric standard (\$119 as of [REDACTED]) if the client has no

heating/cooling expense but has a responsibility to pay for non-heat electricity; the water and/or sewer standard (currently \$81) if the client has no heating/cooling expense but has a responsibility to pay for water and/or sewer separate from rent/mortgage; the telephone standard (currently \$33) if the client has no heating/cooling expense but has a responsibility to pay for traditional land-line service, cell phone service, or voice-over-Internet protocol; the cooking fuel standard (currently \$33) if the client has no heating/cooling expense but has a responsibility to pay for cooking fuel separate from rent/mortgage; and the trash removal standard (currently \$19) if the client has no heating/cooling expense but has a responsibility to pay for trash removal separate from rent/mortgage. BEM 554, pp. 20-24 and RFT 255, p. 1.

Sometimes the excess shelter deduction calculation will show more than one utility deduction. However, if the client is eligible for the \$539 mandatory h/u that is all the client is eligible for. If she is not eligible for the mandatory h/u, she gets the sum of the other utility standards that apply to her case. BEM 554, pp. 15 and 20.

In this case, the evidence established that Petitioner was not eligible for the \$539 mandatory h/u standard in accordance with Department policy. See BEM 554, pp. 15-20. Petitioner's rent included all utilities, such as heat, electric, trash etc... The Department properly determined that Petitioner was only eligible for the telephone standard deduction.

Sixth, Petitioner argued that she is also responsible for personal care items, such as gas, a car note, life insurance, etc. and that these expenses should be factored into the budget. However, a review of BEM 554 finds that these types of personal items/care cannot be factored into her budget. See BEM 554, pp. 1-30.

In summary, the Department will recalculate Petitioner's FAP benefits because it failed to satisfy its burden of showing that it properly calculated her unearned income.

DECISION AND ORDER

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 failed to satisfy its burden of showing that it properly decreased Petitioner's FAP benefits effective [REDACTED].

Accordingly, the Department's FAP 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 the FAP budget, including the unearned income to determine if an overpayment is present and if verified, determine if the overpayment should be excluded from the gross income effective [REDACTED];
2. Issue supplements to Petitioner for any FAP benefits she was eligible to receive but did not from [REDACTED], ongoing; and
3. Notify Petitioner of its decision.

EF/hw


Eric Feldman

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]

[REDACTED]

Petitioner

[REDACTED]