



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
Christopher Seppanen  
Executive Director

SHELLY EDGERTON  
DIRECTOR

[REDACTED]

Date Mailed: June 17, 2016  
MAHS Docket No.: 16-006578  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Darryl Johnson

### **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 June 15, 2016, from Lansing, Michigan. The Petitioner appeared on her own behalf. The Department of Health and Human Services (Department) was represented by Eligibility Specialist [REDACTED], and Assistance Payments Supervisor [REDACTED].

### **ISSUE**

Did the Department properly determine Petitioner's Food Assistance Program (FAP) benefit award?

### **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 on-going FAP recipient.
2. On March 30, 2016, Petitioner submitted copies of two pay stubs from her employment showing gross income of \$ [REDACTED] during the week ending March 4, 2016, \$ [REDACTED] during the week ending March 18, 2016, and year-to-date gross wages of \$ [REDACTED] as of March 18, 2016.
3. Petitioner was not paid for a full week during the week ending March 4 because there was a school break during that week, and she is only paid based upon the hours she works.

4. Petitioner also receives child support of \$ [REDACTED] per month in total for two children.
5. In a Notice of Case Action dated April 20, 2016 (Exhibit 1 Pages 2-3) the Department approved Petitioner for \$ [REDACTED] per month in FAP based upon a household size of four, unearned income of \$ [REDACTED] per month, and earned income of \$ [REDACTED] per month.
6. On May 9, 2016, the Department received Petitioner's hearing request, protesting the FAP award.

### **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.

The Department is constrained to establishing budgets based upon the information that is available to the Department regarding a client's income and expenses. While Petitioner might have an income that fluctuates depending upon her work hours, in this case the evidence shows that it correctly applied the policy. She submitted pay stubs to show a variance in her income, and her pay in one period was roughly half of what it was in the other period, but there is no evidence that this variance was a routine event. When there is irregular income, BEM 505 (4/1/16) p. 9 instructs the Department to "determine the standard monthly amount by adding the amounts entered together and dividing by the number of months used." The Department used her pay stub for the week ending March 18, 2016 in determining her monthly budget.

FAP allotments are provided based upon group size, income, and various expenses along with certain deductions. It is a formulaic method of determining an allotment. The burden is on the Department to prove that it acted according to policy. When the budget facts are undisputed, and when the formula is followed, there is no evidence that the Department erred. In this case, the Department provided two pay stubs. One had a gross pay of \$ [REDACTED] for a bi-weekly pay period, and the other had gross pay of \$ [REDACTED] for a bi-weekly pay period. Petitioner's year-to-date gross as of March 4, 2016 was \$ [REDACTED], so it can be extrapolated that her year-to-date gross as of

February 19, 2016 was \$ [REDACTED]. There were four pay periods to that point, and her bi-weekly gross pay would have been \$ [REDACTED].

The Department determined Petitioner's budget using the higher of the two pay stubs that were provided. Her gross pay for the six pay periods ending March 18, 2016 was \$ [REDACTED]. That is an average of \$ [REDACTED] per pay period. BEM 505 at 5-6 provides the following guidance:

Use past income to prospect income for the future unless changes are expected:

- Use income from the **past 30 days** if it appears to accurately reflect what is expected to be received in the benefit month.

**Note:** The 30-day period used can begin up to 30 days before the interview date or the date the information was requested.

**Exception:** For FAP only, when processing a semi-annual contact, the 30-day period can begin up to 30 days before the day the DHS-1046, Semi-Annual Contact Report, is received by the client or the date a budget is completed. Any 30-day period that best reflects the client's prospective income within these guidelines can be used.

Discard a pay from the past 30 days if it is unusual and does not reflect the normal, expected pay amounts. Document which pay is being discarded and why. For example, the client worked overtime for one week and it is not expected to recur.

Mary works at Walmart and is paid every two weeks. Her income fluctuates but she is scheduled to work approximately 20 hours per week. In talking with Mary, you agree that the last 30 days income is an accurate reflection of future income. Using the two paychecks received in the last 30 days (\$210.00 and \$229.60), you determine the budgetable monthly income amount is \$472.57 (\$210.00 plus \$229.60 divided by 2 times 2.15).

At p. 8 of BEM 505, we find the additional guidance:

Convert stable and fluctuating income that is received more often than monthly to a standard monthly amount. Use one of the following methods:

- Multiply weekly income by 4.3.
- Multiply amounts received every two weeks by 2.15.
- Add amounts received twice a month.

This conversion takes into account fluctuations due to the number of scheduled pays in a month.

In this case, the Department erred. Instead of basing the budget on one pay check of \$ [REDACTED], it should have looked at her gross income, determined a bi-weekly average, and multiplied that by 2.15. Using her average as of March 18 (\$ [REDACTED]), and multiplying that by 2.15, her monthly earned income is \$ [REDACTED]. The Department overstated her earned income by more than \$ [REDACTED].

The Administrative Law Judge, based upon 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 determined Petitioner's FAP.

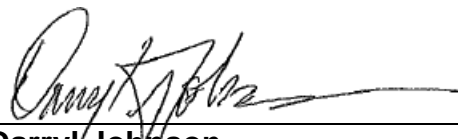
### **DECISION AND ORDER**

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. Redetermine Petitioner's FAP benefit eligibility, effective May 1, 2016;
2. Issue a supplement to Petitioner for any benefits improperly not issued.

DJ/mc



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**Darryl Johnson**  
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]