



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: September 23, 2016
MAHS Docket No.: 16-011667
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 September 15, 2016, from Detroit, Michigan. Petitioner appeared and represented himself. The Department of Health and Human Services (Department) was represented by [REDACTED], Assistance Payment Supervisor.

ISSUE

Did the Department properly calculate Petitioner's Food Assistance Program (FAP) benefits effective September 1, 2016 ongoing?

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. On August 1, 2016, after processing Petitioner's redetermination, the Department sent Petitioner a Notice of Case Action notifying him that his monthly FAP benefits were decreasing to [REDACTED] effective September 1, 2016 (Exhibit A).
3. On August 10, 2016, the Department received Petitioner's request for hearing disputing 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).

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 requested a hearing disputing the decrease of his FAP benefits from [REDACTED] monthly to, effective September 1, 2016, [REDACTED] monthly. The Department explained that the decrease was due to Petitioner's failure to verify his housing expenses in connection with his redetermination. While the Department failed to establish that Petitioner was required to verify his housing expenses, the evidence established that Petitioner submitted verification of his expenses to the Department on August 24, 2016, and the Department recalculated Petitioner's FAP budget for September 2016 ongoing to include Petitioner's shelter expenses. On September 1, 2016, the Department sent Petitioner a Notice of Case Action notifying him that his monthly FAP benefits were increasing to [REDACTED] effective September 1, 2016 (Exhibit B). The Department also presented a benefit summary inquiry establishing that [REDACTED] in FAP benefits was issued to Petitioner for September 2016. Information used to calculate Petitioner's monthly FAP benefits for September 2016 ongoing was reviewed with Petitioner at the hearing.

The budgets on the August 1, 2016 and September 1, 2016 Notices of Case Action both showed [REDACTED] in monthly unearned income, which Petitioner verified was his gross monthly Retirement, Survivors and Disability Insurance (RSDI) income.

The FAP net income budget deductions to gross income were also reviewed with Petitioner. Because Petitioner receives RSDI benefits based on a disability, he is a senior/disabled/veteran (SDV) member of his FAP group. See BEM 550 (October 2015), p. 1. For FAP groups with one or more SDV members and no earned income, 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 out-of-pocket medical expenses in excess of [REDACTED], and the excess shelter deduction. BEM 554 (June 2016), p. 1; BEM 556 (July 2013), pp. 4-5.

Petitioner, as the only member of his FAP group, was eligible for a [REDACTED] standard deduction, as shown on the budgets. RFT 255 (July 2016), p. 1. Petitioner confirmed

that he had no child care expenses. Therefore, the budgets properly showed no deduction for those expenses. Petitioner acknowledged that the Department paid his Part B Medicare premium. While he testified that he had out-of-pocket medical expenses in excess of [REDACTED] he admitted that he had not provided verification of those expenses to the Department. Under these circumstances, the Department acted in accordance with policy when it did not consider any medical expenses for the recalculated September 2016 ongoing budget, as shown on the September 1, 2016 Notice of Case Action. BEM 554, pp. 8-12. Petitioner was advised that if his monthly out-of-pocket medical expenses exceeded [REDACTED] he should verify those expenses to the Department to possibly affect future FAP.

The budgets in the Notices show that the Department considered [REDACTED] in monthly child support expenses, but Petitioner argued that the Social Security Administration (SSA) withheld [REDACTED] monthly for his child support obligations, and he presented a letter from SSA supporting his testimony (Exhibit 1). Child support expenses are allowed for the amount of court-ordered child support and arrearages paid by the household members to non-household members in the benefit month. BEM 554, p. 6. Expenses are used from the same calendar month as the month for which benefits are being determined and remain unchanged until the FAP group reports a change. BEM 554, p. 3. Because the SSA letter indicates that [REDACTED] was withheld monthly effective September 2016, the benefit month at issue, the Department did not act in accordance with Department policy when it applied a different amount for the child support expense deduction.

The final deduction available to Petitioner in calculating his FAP benefits is the excess shelter deduction, which takes into consideration a client's monthly shelter expenses and applicable utility standard for any utilities the client is responsible to pay. BEM 556, pp. 4-5. In this case, the Department corrected the FAP budget for September 2016 ongoing to include Petitioner's monthly [REDACTED] rental expense.

The utility standard that applies in calculating a client's excess shelter deduction is dependent on the client's circumstances. A client is eligible for the heat and utility (h/u) standard, the most advantageous utility standard available to a client, if (i) the client is responsible for, or contributes towards, heating or cooling (including room air conditioner) expenses, (ii) the landlord bills the client for excess heating or cooling; (iii) the client has received a HHC) in an amount greater than \$20 in the application month or in the immediately preceding 12 months prior to the certification month at the time of redetermination; (iv) the client received a low income home energy assistance payment (LIHEAP) payment or a LIHEAP payment was made on their behalf in an amount greater than \$20 in the certification month or in the immediately preceding 12 months prior to the certification month; or (v) the client otherwise has **any** responsibility for the heating/cooling expense. BEM 554, pp. 14-20; RFT 255 (October 2015), p. 1. If a client is not eligible for the mandatory h/u standard, she may be eligible for mandatory *individual* standards for non-heat electric, water and/or sewer, telephone, cooking fuel, and/or trash removal, as applicable. BEM 554, pp. 20-23.

In this case, Petitioner testified that his heating and cooling expenses and all utilities other than telephone were included in his rent. Therefore, the only utility standard Petitioner was eligible to receive was the [REDACTED] telephone standard, as shown in the budgets. RFT 255, p. 1.

Because the Department misapplied the child support expense deduction for the September 2016 ongoing budget, the Department did not act in accordance with Department policy when it calculated Petitioner FAP benefits.

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 did not act in accordance with Department policy when it calculated Petitioner's FAP benefits for September 1, 2016 ongoing.

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 benefits for September 1, 2016 ongoing;
2. Issue supplements to Petitioner for any FAP benefits he is eligible to receive but did not from September 1, 2016 ongoing; and
3. Notify Petitioner in writing of its decision.

ACE/tlf



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

DHHS

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Via Email:

[REDACTED]
[REDACTED]
[REDACTED]
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