



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: October 4, 2016
MAHS Docket No.: 16-012193
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 [REDACTED] from Detroit, Michigan. The Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearing Facilitator.

ISSUE

1. Did the Department properly close the Petitioner's Food Assistance Program (FAP) case due to excess income?
2. Did the Department properly calculate the Petitioner's earned income for [REDACTED] when calculating her Food Assistance 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. The Petitioner was an ongoing recipient of FAP benefits.
2. The Petitioner filed a Change Report with the Department on [REDACTED]. The change report advised the Department that there was a change in income and that Petitioner was expected to work four hours a week at \$[REDACTED] biweekly. The change report did not indicate who the employer was or whether this was an increase or reduction of hours. Exhibit 2.

3. On [REDACTED], the Department sent the Petitioner a verification of employment for [REDACTED]. A second verification of employment for [REDACTED] was also sent to the Petitioner on the same date. Exhibit 3.
4. On [REDACTED], the Petitioner returned the Verification of Employment for [REDACTED] with pay stubs. The Verification reported gross income for [REDACTED] in the amount of \$ [REDACTED] ([REDACTED]) and \$ [REDACTED] ([REDACTED]). Exhibit 4.
5. The Petitioner provided an additional verification of employment on [REDACTED], from [REDACTED], which was a copy of the first verification received earlier. Exhibits 5 and 12.
6. On [REDACTED], the Petitioner provided the Department pay stubs for [REDACTED] for [REDACTED], with a notation signed by the Petitioner "last check from [REDACTED] last day of work [REDACTED]." The pay stub was for pay issued on [REDACTED], in the amount of \$ [REDACTED] and a pay check dated [REDACTED], for gross pay of \$ [REDACTED]. Exhibit 12.
7. No completed verification of employment for [REDACTED] was returned at that time. Exhibit 5.
8. The Petitioner completed a Semi-Annual Contact Report on [REDACTED]. In the report, the Petitioner reported her income had changed and that she had begun employment with [REDACTED] on [REDACTED]. Attached to the Semi-Annual Report were pay stubs for [REDACTED] for a gross pay of \$ [REDACTED] and a paystub for [REDACTED] dated [REDACTED], in the amount of \$ [REDACTED]. Exhibit 6.
9. The Department issued a Notice of Case Action dated [REDACTED], closing the Petitioner's FAP case effective [REDACTED], due to her monthly income exceeding the monthly income limit for a group size of three persons. The Department determined that the Petitioner's monthly income was \$ [REDACTED] and was over the \$ [REDACTED] income limit established by Department policy. Exhibit 8.
10. The Department reinstated the Petitioner's FAP case on [REDACTED], when Petitioner reapplied for MA.
11. The Petitioner requested a timely hearing on [REDACTED], protesting the Department's determination of her income amount.

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 this case, the Petitioner challenged the closure of her FAP due to excess income. The Department issued a Notice of Case Action dated [REDACTED], advising the Petitioner that effective [REDACTED], her FAP case would close due to excess income. Exhibit 8. In addition, the Petitioner challenged the Department's income determinations used to determine her FAP benefits for [REDACTED].

Closure of Food Assistance Case

As a result of a Change Report filed by the Petitioner indicating a change in pay, the Department thereafter requested verification of current employment. The Petitioner returned a verification of employment for [REDACTED] and also attached two pay stubs from [REDACTED] with a handwritten note on one of the pay stubs which stated "last check from [REDACTED] last day of work [REDACTED]". The verifications were returned to the Department on [REDACTED]. Exhibit 5.

The Department issued a Notice of Case Action dated [REDACTED], effective [REDACTED], which closed the Petitioner's FAP case when it determined that Petitioner's income of \$[REDACTED] exceeded the FAP income eligibility limit of \$[REDACTED]. Exhibit 8. At the time of the [REDACTED], Notice, the Department continued to include income from the Petitioner's former employer [REDACTED] when it determined the Petitioner had excess income. Exhibit 3. After receiving the pay stubs regarding [REDACTED] employment ending on [REDACTED], the Department did not seek verification from the Petitioner to determine when the employment ended based upon the employer's records. Essentially, the Petitioner, when it provided the pay stubs and note that her employment with [REDACTED] had ended, provided the Department with notification of a change in employment, namely, the ending of her employment with [REDACTED]. Thereafter, the Department did not seek verification of the end date of employment for [REDACTED].

The Petitioner filed a Semi-Annual Contact Report on [REDACTED], advising the Department that her income had changed. Exhibit 6. The Petitioner advised the Department that it had a new employer, [REDACTED]. Exhibit 6. When the

Petitioner reported this new employment, the Department recalculated the Petitioner's FAP and included earned income from [REDACTED] and [REDACTED] and resulted in FAP case closure. The Department recalculated the income based upon [REDACTED] verification and pay stubs provided by the Petitioner at that time. The Department calculated the Petitioner's FAP benefits after receiving the verifications and removed the [REDACTED] income for [REDACTED] and reinstated the Petitioner's FAP case. These actions, however, occurred after the Petitioner's hearing request.

The issue in this case is whether the Department properly closed the Petitioner's FAP case due to excess income. It is determined based upon the evidence presented that it did not properly close the FAP case. Once having received notice that [REDACTED] employment had ended, the Department was required to verify ending of employment. Department policy requires that when income stops:

Stopping Income

For stopping income, budget the final income expected to be received in the benefit month. Use the best available information to determine the amount of the last check expected. **Use information from the source and from the client.** Remove stopped income from the budget for future months. BEM 505, p. 8.

Do not deny or terminate assistance because an employer or other source refuses to verify income; see BAM 130, **VERIFICATION AND COLLATERAL CONTACTS** BAM 105 (October 1, 2016) p. 19.

Department policy requires that the Department must:

Review the effect on eligibility whenever the client reports a change in circumstances. Actions must be completed within the time period specified in BAM 220. BAM 105, p. 18

At application, redetermination, semi-annual contact and mid-cert contact, check **all** available automated systems matches to see if income has started, stopped, or changed (for example: consolidated inquiry (CI), SOLQ, etc.). BAM 105, p. 19

As no verification was sought, Department policy must be consulted to determine when the change (stopping of income from employment) should have been made. BAM 220 requires for FAP benefits only:

Act on a change reported by means other than a tape match within 10 days of becoming aware of the change.

Benefit Increases: Changes which result in an increase in the household's benefits must be effective no later than the

first allotment issued 10 days after the date the change was reported, provided any necessary verification was returned by the due date. A supplemental issuance may be necessary in some cases. If necessary verification is **not** returned by the due date, take appropriate action based on what type of verification was requested. If verification is returned late, the increase must affect the month after verification is returned. BAM 220 (October 1, 2016) p. 7.

For FAP income decreases Department policy provides:

FAP

Income decreases that result in a benefit increase must be effective no later than the first allotment issued 10 days after the date the change was reported, provided necessary verification was returned by the due date. Do **not** process a change for a month earlier than the month the change occurred. A supplement may be necessary in some cases. BEM 505 (July 1, 2016), p. 11.

Here the change was reported [REDACTED]; and no verification was sought by the Department. Under these circumstances, the change would normally have been required to be made allowing for ten days from the date the change is reported or the date a request by verification to provide verification is made. The change must still affect the correct issuance month; i.e., the month after the month in which the 10th day after the change is reported which in this case would have been [REDACTED]. BEM 505, p. 12. Thus, the Emmanuel employment income should have been removed as of [REDACTED].

Another verification of employment for [REDACTED] was sent to the Petitioner on [REDACTED] in conjunction with a new application for MA. The Department received the [REDACTED] verification on [REDACTED], prior to the FAP closure date, as a result of the Petitioner filing an application for MA. Exhibit 11. In that verification, the Department was advised that the Petitioner's last paycheck from this employer was [REDACTED]. This verification was **after the Notice closing** the Petitioner's FAP case due to excess income and **after** the Petitioner's current request for hearing regarding her FAP closure, and thus, does not affect whether the initial closure of the FAP case was correct.

Because the Department did not seek verification and allow the Petitioner to provide proof that employment ended as it should have, the Department was unable to determine when employment ended. In addition, the Petitioner was not notified that in order for the income from [REDACTED] to be removed, she would have to have her former employer verify the date employment ended. Thus, based upon the Department's failure to act, it continued to include earned income for [REDACTED] causing the FAP case closure.

Based upon the foregoing analysis and Department policy, it is determined that the Department incorrectly closed the Petitioner's FAP case due to excess income.

Income calculation for [REDACTED]

The Petitioner challenged the Department's determination of her earned income for both [REDACTED] and a review of the specific income for these months, including pay stubs was made at the hearing. After review of the pay stubs for Petitioner's employers [REDACTED] and [REDACTED] for [REDACTED], it was determined that the Department correctly calculated the Petitioner's income to be \$ [REDACTED] and thus, the food assistance determination for that month was correct. A thorough review of the pay stubs for each employer was conducted and confirmed. **No income from [REDACTED] was included in [REDACTED].** Apparently the Department went back and corrected and removed that income.

The Department calculated income for [REDACTED] and testified it used the following pay stubs for the employer [REDACTED] \$ [REDACTED] paid [REDACTED], and \$ [REDACTED] paid [REDACTED]. The Department testified it determined the gross earned income of \$ [REDACTED]. When the two gross pays are added together, they total \$ [REDACTED]. This sum is then divided by two to get the adjusted biweekly income which is \$ [REDACTED]. This amount is then multiplied by 2.15, which equals monthly gross income of \$ [REDACTED]. Thus, the Department used the correct income and did not include income when determining [REDACTED] FAP benefits for [REDACTED]. The Department correctly determined [REDACTED] income.

In [REDACTED], the Department included no income from employer [REDACTED] \$ [REDACTED] from [REDACTED] and \$ [REDACTED] for [REDACTED]. The income from [REDACTED] was based on two pay stubs dated [REDACTED], and [REDACTED], for a total of \$ [REDACTED]. The Department also used the pay for [REDACTED] in the amount of \$ [REDACTED]. When the appropriate FAP formula is applied, the gross income of \$ [REDACTED] plus \$ [REDACTED] totals \$ [REDACTED]. The gross income is then divided by 2; the result is Petitioner's average biweekly pay of \$ [REDACTED]. Thereafter, the biweekly pay is required to be multiplied times 2.15 resulting in \$ [REDACTED] in income. The Department used \$ [REDACTED] but the difference (\$ [REDACTED]) is de minimis and thus, is determined to be correct. See BEM 505 (July 1, 2016), p. 9. As discussed above, it is determined that the Department correctly included income from [REDACTED] as it had no notice of the change in income from loss of employment until [REDACTED].

Verify income at application and at redetermination. Verify changes that result in a benefit increase or when change information is unclear, inconsistent or questionable. BEM 505 (July 1, 2015, p. 15).

Verification is usually required at application/redetermination **and** for a reported change affecting eligibility or benefit level. BAM 130 (July 1, 2016) p. 1

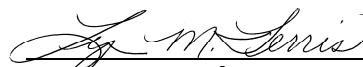
In conclusion, although the Department initially erred when it closed the Petitioner's FAP case, the effects of that closure did not negatively affect the Petitioner's benefits as based upon a review of the income used for [REDACTED]; the Department correctly calculated income and properly included [REDACTED] income for [REDACTED] and did not include the income for [REDACTED]. Therefore, no further change in the Petitioner's benefits are necessary for those months.

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 acted in accordance with Department policy when it calculated the FAP earned income for [REDACTED]; and the negative effects of the improper closure were corrected and thus, no further action is required to be taken by the Department regarding the Petitioner's FAP benefits.

Accordingly, the Department's decision is **AFFIRMED**.

LMF/jaf



Lynn M. Ferris
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]

Via email

[REDACTED]