



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: September 30, 2016
MAHS Docket No.: 16-012441
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Eric J. 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 [REDACTED], from Detroit, Michigan. The Petitioner was represented by his guardian/father, [REDACTED]; and [REDACTED], Petitioner, was also present at the hearing. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearings Facilitator.

ISSUE

Did the Department properly calculate Petitioner's Food Assistance Program (FAP) allotment effective [REDACTED]

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. Exhibit A, pp. 3-8.
2. In [REDACTED], Petitioner's guardian submitted a mortgage statement showing that Petitioner was responsible for \$[REDACTED] in monthly housing expenses (this amount included homeowners insurance and property taxes).
3. On [REDACTED] Petitioner's guardian submitted a redetermination in which it was reported that that Petitioner was now responsible for \$[REDACTED] in monthly housing expenses. Exhibit B, p. 8.

4. Effective [REDACTED], Petitioner received a monthly FAP allotment of \$ [REDACTED] Exhibit A, p. 7.
5. For [REDACTED], the Department budgeted \$ [REDACTED] as Petitioner's monthly housing expenses. Exhibit A, p. 21.
6. On [REDACTED] the Department sent Petitioner a Notice of Case Action notifying him that his FAP benefits decreased to \$ [REDACTED] effective [REDACTED] Exhibit A, pp. 9-10.
7. On [REDACTED], the Department sent Petitioner a Notice of Case Action notifying him that his FAP benefits increased to \$ [REDACTED] effective [REDACTED]. Exhibit A, pp. 11-12. For [REDACTED], the Department budgeted \$ [REDACTED] as Petitioner's monthly housing expenses. Exhibit A, pp. 10 and 12.
8. On [REDACTED], Petitioner filed a hearing request, protesting the Department's action. 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, Petitioner's guardian is disputing the calculation of Petitioner's FAP allotment effective [REDACTED]. The guardian's argument also included that due to the medical conditions that his son, Petitioner, suffers from, he is on a medical restricted diet and has to follow strict nutrition and dietary guidelines. See Exhibit 1, pp. 1-2. As such, the undersigned Administrative Law Judge (ALJ) will address Petitioner's concerns below:

It was not disputed that the certified group size is one, and that Petitioner is a senior/disabled/disabled veteran (SDV) member. The Department presented the [REDACTED] FAP budget for review. See Exhibit A, pp. 19-20.

First, the Department properly calculated Petitioner's gross unearned income to be \$ [REDACTED] Exhibit A, p. 19. This amount consisted of Petitioner's Retirement, Survivors

and Disability Insurance (RSDI) income, which the guardian did not dispute. See BEM 503 (July 2016), pp. 28-33.

Next, the Department applied the \$[REDACTED] standard deduction applicable to Petitioner's group size of one. RFT 255 (July 2016), p. 1. Petitioner's guardian also did not dispute that the dependent care, medical, and child support deductions were calculated as zero. See Exhibit A, p. 19. Once the Department subtracts the \$[REDACTED] standard deduction from Petitioner's RSDI income, this results in an adjusted gross income of [REDACTED]. Exhibit A, pp. 19-20.

Also, the Department provides Petitioner with an excess shelter deduction, which is comprised of his housing costs and utility expenses. The FAP – Excess Shelter Deduction budget (shelter budget) indicated that Petitioner's monthly housing expense is \$[REDACTED]. Exhibit A, p. 21. Petitioner's guardian disputed this amount claiming that the monthly housing expenses were actually \$[REDACTED] which comprised of the mortgage payment, homeowners insurance, and property taxes. Petitioner's guardian argued that he notified the Department that the housing expenses were \$[REDACTED] but did not provide any documentation showing that he reported the change.

In response, the Department testified that Petitioner's guardian submitted a shelter verification in [REDACTED] showing that Petitioner was responsible for \$[REDACTED] in monthly housing expenses, which included the homeowners insurance and property taxes. However, the Department continued to budget \$[REDACTED] as Petitioner's housing expenses, even though verification showed it was \$[REDACTED]. Exhibit A, p. 21. Moreover, the Department testified that on [REDACTED], Petitioner's guardian submitted a redetermination in which it was reported that that Petitioner was now responsible for \$[REDACTED] in monthly housing expenses. Exhibit B, p. 8. Because Petitioner reported this change in housing expenses in late [REDACTED] during a redetermination, the change would not go into effective until [REDACTED], (the start of the new certified benefit period). See BAM 210 (July 2016), pp. 3 and 15; and BAM 220 (July 2016), p. 7. (The Department acts on a change reported by means other than a tape match within 10 days of becoming aware of the change.) But still, beginning [REDACTED], the Department continued to budget Petitioner's housing expenses as \$[REDACTED] rather than \$[REDACTED]. Exhibit A, pp. 10 and 12. Moreover, the Department did not request verification of Petitioner's shelter expenses when it was reported that there had been a change. See BAM 210, p. 16, (For redeterminations, the DHS-3503, Verification Checklist, should be sent after the redetermination interview for any missing verifications allowing 10 days for their return).

The Department allows a shelter expense when the FAP group has a shelter expense or contributes to the shelter expense. BEM 554 (June 2016), p. 12. Do not prorate the shelter expense even if the expense is shared. BEM 554, p. 12. Shelter expenses are allowed when billed. BEM 554, p. 12. The expenses do not have to be paid to be allowed. BEM 554, p. 12.

Housing expenses include rent, mortgage, a second mortgage, home equity loan, required condo or maintenance fees, lot rental or other payments including interest leading to ownership of the shelter occupied by the FAP group. BEM 554, pp. 12-13.

Property taxes, state and local assessments and insurance on the structure are allowable expenses. BEM 554, p. 13. Do not allow insurance costs for the contents of the structure, for example, furniture, clothing and personal belongings. BEM 554, p. 13.

The Department verifies shelter expenses at application and when a change is reported. BEM 554, p. 14. If the client fails to verify a reported change in shelter, remove the old expense until the new expense is verified. BEM 554, p. 14. The Department verifies the expense and the amount for housing expenses, property taxes, assessments, insurance and home repairs. BEM 554, p. 14.

Based on the foregoing information and evidence, the Department failed to properly calculate Petitioner's shelter expenses in accordance with Department policy. Whether it is Petitioner's housing expenses beginning [REDACTED], or [REDACTED], the Department miscalculated Petitioner's housing expenses.

For the [REDACTED] benefits, the Department only budgeted \$ [REDACTED] for Petitioner's housing expenses, even though the Department had verification submitted back in [REDACTED] showing that his monthly housing expense was actually \$ [REDACTED]. As such, the Department did not act in accordance with Department policy when it miscalculated Petitioner's shelter expenses effective [REDACTED]. BEM 554, p. 14. The Department will recalculate the shelter expenses effective [REDACTED], in accordance with Department policy.

However, as to the guardian's claim that the housing expenses should be \$ [REDACTED] for [REDACTED], the undersigned disagrees. The evidence records show that Petitioner's guardian reported in a redetermination received on [REDACTED], that Petitioner was now responsible for \$ [REDACTED] in monthly housing expenses. Exhibit B, p. 8. Because the guardian reported this change in shelter expenses in late [REDACTED], the change would not take into effect until [REDACTED]. See BAM 210, pp. 3 and 15; and BAM 220, p. 7. But still, the Department failed to follow up on the reported change and did not request verification of the shelter expenses. BEM 554, p. 14. It appears Petitioner's shelter expenses should have increased to \$ [REDACTED] effective [REDACTED] [REDACTED] subject to verification. As such, the Department will initiate verification of Petitioner's shelter expenses due to the reported changed effective [REDACTED]. See BAM 210, pp. 3 and 15, and BEM 554, p. 14.

In summary, because the Department failed to properly calculate Petitioner's shelter expenses for both [REDACTED] and [REDACTED], the Department is ordered to recalculate Petitioner's FAP allotment effective [REDACTED].

It should be noted that the Department provided Petitioner with the \$ [REDACTED] mandatory heat and utility (h/u) standard, which encompasses all utilities (water, gas, electric, telephone) and is unchanged even if a client's monthly utility expenses exceed the \$ [REDACTED] amount. See Exhibit A, p. 21; BEM 554, pp. 14-16; and RFT 255, p. 1.

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 calculated Petitioner's FAP allotment effective [REDACTED].

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 the FAP budget (including the shelter expenses) effective [REDACTED]
2. Initiate verification of Petitioner's shelter expenses due to the reported change in housing expenses effective [REDACTED], in accordance with Department policy;
3. Issue supplements to Petitioner for any FAP benefits he was eligible to receive but did not, from [REDACTED]; and
4. Notify Petitioner of its decision.

EJF/jaf



Eric J. 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]

Petitioner

[REDACTED]

Via email

[REDACTED]