



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: December 2, 2016
MAHS Docket No.: 16-016077
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 [REDACTED] and her daughter/translator, [REDACTED]. 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) 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. On [REDACTED], Petitioner applied for FAP benefits. Exhibit A, pp. 13-30.
2. In the application, Petitioner reported two people in her household, her and her spouse. Exhibit A, p. 15.
3. On [REDACTED], Petitioner submitted verification of her water bill and electrical/gas bill.
4. On [REDACTED], the Department conducted a telephone interview with Petitioner in which she reported the following: (i) she resides with her spouse; (ii)

they have earned income; (iii) she has a checking account; (iv) one vehicle; and (v) she has a monthly mortgage and heat and electric standard obligations. Exhibit A, p. 1, (Hearing Summary).

5. On [REDACTED], the Department sent Petitioner a Verification Checklist (VCL), which requested verification of home/building, loss of employment, land contract, and checking account. Exhibit B, pp. 2-4. The verifications were due back by [REDACTED]. Exhibit B, pp. 2-4.
6. On [REDACTED], the Department sent Petitioner a Notice of Case Action notifying her that she was approved for FAP benefits as follows: (i) \$ [REDACTED] for [REDACTED]; and (ii) \$ [REDACTED] effective [REDACTED]. Exhibit A, pp. 9-12.
7. On [REDACTED], Petitioner submitted a copy of her homeowner's insurance policy. Exhibit A, pp. 53-55.
8. On [REDACTED], Petitioner filed a hearing request protesting the Department's action. Exhibit A, pp. 3-5.

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.

Preliminary matter

On [REDACTED], Petitioner attempted to submit post-hearing correspondence; however, the hearing record had closed, and this additional correspondence cannot be reviewed or considered.

FAP allotment

In the present case, Petitioner disputed the amount of her FAP allotment effective [REDACTED]. As such, the undersigned Administrative Law Judge (hereinafter

referred to as “the undersigned”) reviewed the [REDACTED] budget to determine if her FAP allotment was properly calculated. Exhibit A, pp. 61-63.

First, the Department indicated that Petitioner’s certified group size was two, Petitioner and her spouse, and that both are considered to be senior/disabled/disabled veteran (SDV) members. Exhibit A, p. 61. However, Petitioner claimed that her group size should be four, which included her two adult children, ages [REDACTED] and [REDACTED]. However, Petitioner failed to include them in her application because she indicated that her household size was only two. Exhibit A, p. 15.

In response, Petitioner claimed that she had assistance in completing the application; and the individuals who assisted her made the mistake. However, the undersigned disagrees. Because Petitioner only indicated that her group size was two in the application, the Department properly processed her application to reflect a group size of two effective [REDACTED].

It should be noted, though, that Petitioner and her spouse have been permanent residents since [REDACTED]. Exhibit A, p. 18. Therefore, they would be eligible to receive FAP assistance because they have been here more than five years. See BEM 225 (October 2016), p. 11, (Persons who have lived in the U.S. as a qualified alien for at least five years since their date of entry). However, Petitioner did present her adult children’s permanent resident cards that show they have been in the U.S. since [REDACTED] with a category code of “FX2.” Exhibit B, p. 1. Based on this information, it appears the adult children would not be eligible for FAP benefits because they have not resided in the U.S. for at least five years. See BEM 225, pp. 10-11. Nevertheless, the Department is aware as of this hearing that the adult children reside with Petitioner; and the Department can process the member add request to see if the adult children can be part of the FAP group. See BEM 212 (October 2015), p. 9, (member adds/deletes). However, for purposes of this hearing decision, the undersigned will not address whether the adult children are eligible group members because Petitioner only indicated that her group size was two in the application. Exhibit A, p. 15.

Once the Department determines the group size, the Department calculates the FAP group’s total income. In this case, the Department calculated Petitioner’s gross earned income to be \$[REDACTED] which she did not dispute. Exhibit A, p. 61, and BEM 505 (July 2016), pp. 1-16.

Then, once the Department adds together the total income Petitioner receives, the Department will minus any deductions that she might qualify for. See Exhibit A, p. 61. The first deduction the Department properly applied was the \$[REDACTED] standard deduction applicable to Petitioner’s group size of two. Exhibit A, p. 61, and RFT 255 (October 2016), p. 1. Moreover, Petitioner did not dispute that the Department did not provide her for any dependent care, medical, and child support deductions. Exhibit A, p. 61.

Next, the Department also provides Petitioner with a shelter deduction, which consists of housing costs and utility expenses. For the [REDACTED] shelter budget, the

Department calculated Petitioner's housing expenses to be \$ [REDACTED] Exhibit A, p. 47. But for [REDACTED] budget, the Department calculated Petitioner's housing expenses to be zero. Exhibit A, p. 63. It was unclear why this change occurred in the housing expenses. Moreover, Petitioner disputed the calculation of the \$ [REDACTED] housing expenses because it failed to include her taxes and property. Now, when the undersigned asked the Department how it came to the conclusion that her housing expenses was \$ [REDACTED] the Department was unable to provide sufficient evidence and/or testimony to answer the undersigned's inquiry. But on the other hand, when the undersigned attempted to get clarification from Petitioner as to what her housing expenses were, she also was unable to provide sufficient testimony to answer the undersigned's inquiry.

Additionally, the evidence packet did contain the following information/documentation regarding Petitioner's shelter expenses: (i) she reported in her application that her monthly mortgage or land contract is \$ [REDACTED] (ii) a "Direct Endorsement Approval for a HUD/FHA-Insured Mortgage" statement showed a loan amount of \$ [REDACTED] and a monthly premium of \$ [REDACTED] and (iii) a homeowner's bill for \$ [REDACTED] which she claimed was actually \$ [REDACTED] for the total year. See Exhibit A, pp. 26, 49, and 53-55.

For groups with one or more SDV member, the Department allows excess shelter. BEM 554 (June 2016), p. 1. The Department allows a shelter expense when the FAP group has a shelter expense or contributes to the shelter expense. BEM 554, p. 14. The Department does not prorate the shelter expense even if the expense is shared. BEM 554, p. 14. The shelter expenses are allowed when billed. BEM 554, p. 14. The expenses do not have to be paid to be allowed. BEM 554, p. 14. Late fees and/or penalties incurred for shelter expenses are not an allowable expense. BEM 554, p. 14.

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. Deduct the entire insurance charge for structure and contents when the amount for the structure cannot be determined separately. 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. Verify 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 undersigned finds that the Department failed to satisfy its burden of showing that it properly calculated Petitioner's shelter expenses (housing costs).

First, the burden is on the Department to show that it properly calculated the shelter deduction. In this case, though, the Department failed to provide sufficient evidence and testimony showing how it came to the conclusion that Petitioner is only eligible for \$[REDACTED] in housing expenses. Moreover, the Department was unable to explain why the Department then subsequently did not budget any housing expenses for [REDACTED]. As such, the Department will recalculate Petitioner's shelter expenses effective [REDACTED], in accordance with Department policy. BEM 554, pp. 1 and 12-14.

Second, if Petitioner has a mortgage or land contract, this an allowable shelter expense. BEM 554, pp. 12-13. Moreover, Petitioner's HUD/FHA-Insured Mortgage statement and homeowner's policy as provided for the evidence record are also allowable shelter expenses. See BEM 554, p. 13. But, the undersigned was unable to determine Petitioner's total shelter expenses based on insufficient testimony and evidence. Accordingly, this is another reason why the Department must recalculate Petitioner's shelter expenses, effective [REDACTED].

Finally, Petitioner's shelter budget showed that she was not receiving the \$[REDACTED] mandatory h/u standard, but only the \$[REDACTED] water and/or sewer standard and \$[REDACTED] telephone standard deductions. Exhibit A, p. 47. However, this is incorrect because the undersigned finds that Petitioner is eligible for the \$[REDACTED] mandatory h/u. On [REDACTED] the Department indicated that Petitioner submitted verification of her electrical/gas bill. Exhibit A, p. 51, ([REDACTED] bill with a due date of [REDACTED]). Because Petitioner is responsible for the electrical/gas expenses, she is eligible for the \$[REDACTED] mandatory 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 BEM 554, pp. 14-16; and RFT 255, p. 1. As such, the Department will apply Petitioner's mandatory h/u standard to be \$[REDACTED] effective [REDACTED].

In summary, because the Department failed to satisfy its burden of showing that it properly calculated Petitioner's shelter expenses (including housing costs and mandatory h/u), the Department is ordered to recalculate Petitioner's FAP budget, effective [REDACTED].

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 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 Petitioner's FAP budget (including shelter expenses) for a group size of two, effective [REDACTED];
2. Apply Petitioner's mandatory heat and utility (h/u) standard to be \$ [REDACTED] effective [REDACTED];
3. Issue supplements to Petitioner for any FAP benefits she 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]

[REDACTED]