



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: December 19, 2016
MAHS Docket No.: 16-016098

[REDACTED]
[REDACTED]

ADMINISTRATIVE LAW JUDGE: Vicki Armstrong

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 - 273.18; 42 CFR 431.200 - 431.250; 45 CFR 99.1 - 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on December 14, 2016, from Lansing, Michigan. Petitioner was represented by his wife, [REDACTED], who personally appeared and testified on his behalf. Petitioner did not appear.

The Department of Health and Human Services (Department) was represented by Hearing Facilitator [REDACTED] testified on behalf of the Department. The Department submitted 21 exhibits which were admitted into evidence. The record was closed at the conclusion of the hearing.

ISSUE

Did the Department properly determine Petitioner's Food Assistance Program (FAP) 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. On October 4, 2016, Petitioner submitted his FAP Redetermination. [Dept. Exh. 1-6].

2. On October 17, 2016, the Department issued Petitioner a Notice of Case Action informing him that his FAP allotment had been approved for [REDACTED] a month from November 1, 2016 through October 31, 2018. [Dept. Exh. 16-19].
3. Petitioner was receiving monthly unearned income in the amount of [REDACTED] at times relevant to this matter. [Dept. Exh. 4].
4. On October 25, 2016, Petitioner submitted a Request for Hearing disputing the amount of his FAP allotment.

CONCLUSIONS OF LAW

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.

For FAP purposes, all income that is not specifically excluded is countable. BEM 500, p 3 (1/1/2016). Unearned income is all income that is not earned. *Id.* For Unemployment Benefits, *the gross amount* is counted as unearned income. BEM 503, p 34 (7/1/2016) (emphasis added). Gross income is the amount of income before any deductions such as taxes or garnishments. *This may be more than the actual amount an individual receives.* BEM 500, p 4 (1/1/2016) (emphasis added). Gross income includes amounts withheld from income for example, voluntary amounts, amounts to repay a debt and amounts to meet a legal obligation. *Id.*

In this case, Petitioner was receiving monthly unearned income in the amount of [REDACTED] at the time relevant to this matter. A standard deduction of [REDACTED] and a medical deduction of [REDACTED] were subtracted from the total income amount of [REDACTED] leaving an adjusted gross income of [REDACTED] [REDACTED] = [REDACTED]

An excess shelter deduction is determined by adding Petitioner's rent of [REDACTED] and a heat and utility standard of [REDACTED] for a total of [REDACTED], and then subtracting half of Petitioner's adjusted gross income of [REDACTED]. Half of the adjusted gross income of [REDACTED] is [REDACTED]. Therefore, [REDACTED] which is the adjusted excess shelter amount. (Dept. Exh. 13-15). The adjusted excess shelter amount of [REDACTED] is then subtracted from the adjusted gross income of [REDACTED] resulting in a net income of [REDACTED]

Federal regulations at 7 CFR 273.10 provide standards for income and the amount of household benefits. In accordance with the federal regulations, the Department has prepared income and issuance tables which can be found at RFT 260. This issuance

table provides that a household size of two with net income of [REDACTED] is entitled to a [REDACTED] FAP allotment. RFT 260, p 6 (10/1/2016). Therefore, the Department's FAP eligibility determination was correct based on Petitioner's receipt of social security benefits.

Petitioner does not agree with the Department's determination that he was only eligible to receive [REDACTED] in FAP benefits. However, [REDACTED] explained and demonstrated that the Department had been erroneously budgeting a monthly medical deduction of [REDACTED] without supporting documentation. This error was caught and corrected, resulting in the decrease of FAP benefits from [REDACTED] a month to [REDACTED] a month.

This Administrative Law Judge has reviewed the Department's FAP budgets and finds all calculations were properly made. Consequently, the Department's actions must be upheld, because they are in complete compliance with the Department's policies, and with the governing laws and regulations on which those policies are based.

Petitioner's grievance centers on dissatisfaction with the Department's current policy. Petitioner's request to increase his FAP allotment is not within the scope of authority delegated to this Administrative Law Judge pursuant to a written directive signed by the Department of Human Services Director, which states:

Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations or overrule or make exceptions to the Department policy set out in the program manuals.

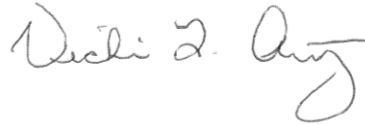
Furthermore, administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940).

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, finds that the Department acted in accordance with Department policy when it determined Petitioner was entitled to FAP benefits of [REDACTED] a month.

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, finds that the Department acted in accordance with Department policy when it determined Petitioner was eligible for [REDACTED] a month in FAP benefits.

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



VLA/db

Vicki Armstrong
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

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
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