



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 13, 2016
MAHS Docket No.: 16-016910
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 December 7, 2016, from Detroit, Michigan. Petitioner appeared and was unrepresented. [REDACTED] appeared as a [REDACTED] translator for Petitioner. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], hearing facilitator.

ISSUE

The issue is whether MDHHS properly determined Petitioner's Food Assistance Program (FAP) eligibility.

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 FAP benefit recipient.
2. Petitioner was a member of a 2-person FAP benefit group.
3. On an unspecified date in May 2016, Petitioner received a letter from MDHHS that he would receive \$ [REDACTED] in FAP benefits.
4. On [REDACTED], MDHHS issued \$ [REDACTED] FAP benefits to Petitioner.
5. As of November 2016, Petitioner receives \$ [REDACTED]/month in federally-issued gross SSI.

6. As of November 2016, Petitioner receives \$[REDACTED] per 3 months in state-issued SSI.
7. On an unspecified date, MDHHS determined Petitioner was eligible for \$[REDACTED] in FAP benefits, effective November 2016, in part, based on \$[REDACTED] in total SSI benefits.
8. On [REDACTED], Petitioner requested a hearing to dispute FAP eligibility for November 2016 and to dispute the alleged MDHHS failure to issue \$[REDACTED] in FAP benefits.

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. MDHHS (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. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing, in part, to dispute an alleged MDHHS failure to issue \$[REDACTED]. Petitioner brought a letter to the hearing from May 2016. The letter was not admitted as an exhibit, but it was not disputed MDHHS sent Petitioner the letter informing Petitioner of a \$[REDACTED] issuance to be paid for the period from [REDACTED], through the end of May 2016.

MDHHS presented an Eligibility Summary (Exhibit 1, p. 7). The summary listed an "authorized" FAP benefit issuance of \$[REDACTED] on [REDACTED]. The issuance was for Petitioner's FAP eligibility from [REDACTED] through [REDACTED]. Petitioner presented no documentation to rebut the MDHHS evidence.

It is found MDHHS issued \$[REDACTED] in FAP benefits to Petitioner on [REDACTED]. Thus, Petitioner is entitled to no remedy for his claim that MDHHS did not issue the FAP benefits.

Petitioner requested a hearing, in part, to dispute FAP eligibility. Petitioner testimony indicated he specifically disputed a [REDACTED] FAP benefit issuance. Petitioner testified the issuance began in October 2016.

MDHHS presented an Eligibility Summary (Exhibit 1, p. 7). The summary listed Petitioner received \$[REDACTED] beginning November 2016. It is found Petitioner intended to dispute FAP eligibility from November 2016.

MDHHS presented various FAP budget pages (Exhibit 1, pp. 1, 2, and 5) for November 2016. All listed budget factors were discussed with Petitioner during the hearing.

BEM 556 details the procedures for determining FAP eligibility. The below analysis incorporates presented evidence and the calculations required of BEM 556.

MDHHS budgeted unearned income of \$[REDACTED]/month. MDHHS testified the income was based on \$[REDACTED] in federally-issued SSI and the average of State of Michigan quarterly issuances of [REDACTED] (averaged as \$[REDACTED]/month).

Petitioner testified he received only [REDACTED]/month in federally-issued SSI benefits. MDHHS presented Petitioner's SOLQ (Exhibit 1, pp. 3-4). Petitioner's SOLQ listed a \$[REDACTED] recurring benefit payment on July 2016. The SOLQ also stated a \$[REDACTED] payment from July 2016 was a "recovered" advance or overpayment.

The SOLQ was printed in December 2016. Petitioner's "current" gross SSI was listed as [REDACTED]. Presumably, the stated "current" amount reflects Petitioner's SSI as of January 2017. Presumably, the amount is a [REDACTED] increase from November 2016. It is found Petitioner is potentially eligible to receive \$[REDACTED] in federally-issued SSI, though SSA recoups \$[REDACTED]/month.

Bridges counts the gross amount of current SSA-issued SSI as unearned income. BEM 503 (July 2016), p. 32. Amounts deducted by an issuing agency to recover a previous overpayment or ineligible payment are not part of gross income. These amounts are excluded as income. MDHHS goes on to list exceptions (see BEM 500) to the general rule excluding income garnished by SSA for previous overpayments. None of the exceptions appear to be applicable.

It is found Petitioner's gross federally-issued SSI income is \$[REDACTED]. Thus, it is found MDHHS improperly calculated Petitioner's federally-issued income to be \$[REDACTED]. For purposes of the remaining analysis only, the erroneous amount of \$[REDACTED] will be accepted as the correct amount of federally-issued SSI to budget.

Petitioner testimony insisted he did not receive any State of Michigan issued SSI income. Generally, SSI recipients in independent living arrangements who are not married to SSI recipient will receive \$[REDACTED]/3 months in state-issued SSI (see BEM 660 and RFT 248). The general rule was supported by presented evidence.

MDHHS presented an Other Income- Search document. The form is known to verify income such as state-issued SSI. A [REDACTED], issuance of \$[REDACTED] to Petitioner was listed. Petitioner presented no documentary evidence to rebut the MDHHS documentation. It is found MDHHS properly factored \$[REDACTED]/month in unearned income for Petitioner.

[MDHHS] uses certain expenses to determine net income for FAP eligibility and benefit levels. BEM 554 (October 2015), p. 1. For groups without a senior (over 60 years old), disabled or disabled veteran (SDV) member, MDHHS considers the following expenses:

child care, excess shelter (housing and utilities) up to a capped amount and court-ordered child support and arrearages paid to non-household members (see *Id.*). For groups containing SDV members, MDHHS also considers the medical expenses above \$35 for each SDV group member(s) and an uncapped excess shelter expense. It was not disputed Petitioner was aged and/or disabled.

Verified countable medical expenses (for SDV groups only), child support, and day care expenses are subtracted from a client's monthly countable income. Petitioner conceded not having any such expenses.

Petitioner's FAP benefit group size justifies a standard deduction of \$151 (see RFT 255). The standard deduction is given to all FAP benefit groups, though the amount varies based on the benefit group size. The standard deduction is subtracted from the countable monthly income to calculate the group's adjusted gross income. Petitioner's FAP group's adjusted gross income is found to be \$[REDACTED].

Petitioner disputed the budgeted housing expenses. Petitioner testimony alleged he paid \$[REDACTED] in annual property taxes. Petitioner also alleged he paid \$[REDACTED] annually for property insurance. For purposes of this decision, Petitioner's testimony will be accepted as fact.

Annual expenses are to be divided by 12 to convert them into monthly expenses (see BEM 505). Dividing Petitioner's stated annual housing costs by 12 results in a monthly housing expense of \$[REDACTED] (rounding to nearest dollar). MDHHS budgeted Petitioner's monthly housing costs to be \$[REDACTED] - a more favorable amount for Petitioner than provided by his testimony. It is found MDHHS did not under-budget Petitioner's housing costs.

MDHHS credited Petitioner with a utility standard of \$[REDACTED] (see RFT 255). The utility standard incorporates all utilities and is the maximum credit available. Petitioner's total shelter expenses (housing + utilities) are found to be \$[REDACTED] (rounding up to nearest dollar).

MDHHS only credits FAP benefit groups with an "excess shelter" expense. The excess shelter expense is calculated by subtracting half of Petitioner's adjusted gross income from Petitioner's total shelter obligation. Petitioner's excess shelter amount is \$[REDACTED] based on the MDHHS factored income.

The FAP benefit group's net income is determined by taking the group's adjusted gross income and subtracting the allowable excess shelter expense. Petitioner's FAP benefit group's net income (with incorrectly budgeted unearned income and utilities) is found to be \$[REDACTED]. A chart listed in RFT 260 dictates the proper FAP benefit issuance. Based on Petitioner's group size and calculated net income, Petitioner's FAP benefit issuance for November 2016 would be \$[REDACTED] the same amount calculated by MDHHS. Thus, the

FAP calculation appears to have no errors other than improperly budgeted federally-issued SSI.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS issued \$[REDACTED] in FAP benefits to Petitioner on [REDACTED] and that Petitioner is entitled to no further remedy concerning the issuance. The actions taken by MDHHS are **PARTIALLY AFFIRMED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly determined Petitioner's FAP eligibility. It is ordered that MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

- (1) Redetermine Petitioner's FAP eligibility for November 2016, subject to the finding that Petitioner's gross federally-issued SSI was [REDACTED]/month; and
- (2) Issue any benefits improperly not issued.

The actions taken by MDHHS are **REVERSED**.

CG/hw



Christian Gardocki
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]

Petitioner

[REDACTED]