



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 15, 2016
MAHS Docket No.: 16-017174
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

Did the Department properly calculate the 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. The Petitioner is a recipient of FAP benefits.
2. The Petitioner's FAP group consists of five (5) members. Petitioner's spouse is an ineligible alien, without permanent resident status or other status and is not eligible for FAP.
3. The Petitioner owns her home and pays property taxes and pays for heat. The Department used the summer tax bill when calculating tax expense and provided the Petitioner a heat and utility (h/u) standard expense of \$ [REDACTED] Exhibit A.

4. During a redetermination, the Department requested that Petitioner provide a current property tax bill and did not issue a Verification Checklist (VCL). The Petitioner provided the Department her summer tax bill for \$ [REDACTED] Exhibit E.
5. The Petitioner provided pay stubs to the Department for her husband and her minor son for [REDACTED]. Exhibit D.
6. The Petitioner requested a timely hearing on [REDACTED].

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 requested a hearing after a redetermination in [REDACTED] after the Department had reduced her FAP benefits several times. On [REDACTED], the Department issued a Notice of Case Action advising the Petitioner that her food benefits were approved for \$ [REDACTED] Exhibit A. At the hearing, the Department reviewed the FAP information; and the following information was presented. During the hearing, the Petitioner also sought a review for several months of her FAP benefits; however, given the [REDACTED] hearing request, the Petitioner's FAP review can only go back 90 days. BAM 600 (June 1, 2016). At the hearing, it was disclosed by the Department that it was improperly calculating Petitioner's FAP benefits for several years due to agency error. The Department incorrectly included the annual tax amount as a monthly cost rather than the monthly property tax amount. The error was corrected with the current Notice of Case Action. Thus, given the Department's admitted error, there is no change which can be made to the FAP benefits except going forward and for [REDACTED] when the benefits were recalculated. Exhibit A and Hearing Summary.

The Petitioner and the Department agreed on the following: the Petitioner's FAP group consists of five (5) members. One of the members is Petitioner's [REDACTED]-year-old son who works. The Department included monthly income from Petitioner's spouse in the amount of \$ [REDACTED] based upon biweekly pays of \$ [REDACTED] and Petitioner's son's income from two pay stubs of \$ [REDACTED] and \$ [REDACTED] Exhibit D. The Petitioner pays heat and was given a h/u allowance of \$ [REDACTED]. The Petitioner owns her home and has no mortgage payment.

The Department, during the redetermination, requested orally that Petitioner provide her most current property tax bill. The Department did not verify the information by sending a verification request. The Petitioner provided only her summer tax bill and did not provide her winter taxes as her summer tax bill was her current bill.

All countable earned and unearned income available to the client must be considered in determining the Petitioner's eligibility for program benefits. BEM 500 (January 1, 2016), pp. 1–4. The Department considers the gross amount of money earned from employment in the calculation of earned income for purposes of FAP budgeting. BEM 501 (July 2016), pp. 6-7.

The deductions to income on the net income budget were also reviewed. Petitioner's FAP group consists of five (5) members.

- Dependent care expense.
- Excess shelter.
- Court ordered child support and arrearages paid to non-household members.
- Standard deduction based on group size.
- An earned income deduction equal to 20% of any earned income.

BEM 554 (June 1, 2016), pp. 1- 30; BEM 556 (July 2013), pp. 4-5.

The Department did not provide the actual FAP budget but did provide sufficient information to determine the earned income the Department used and whether the income was properly calculated.

The Petitioner's husband and son both have earned income and are paid biweekly. Department policies are found in BEM 505 require that the average weekly or biweekly check be determined by adding the checks together and dividing by number of checks. Once this amount is determined, it is either multiplied by 4.3, if the checks are earned weekly or by 2.15 if earned biweekly. BEM 505 (July 2016), pp. 5-9.

Using the one check of \$ [REDACTED] for Petitioner's husband and Petitioner's testimony that he received \$ [REDACTED] biweekly, the total gross income for the husband is \$ [REDACTED]. The monthly income is then averaged and multiplied by 2.15. ($\$ [REDACTED] \div 2 = \$ [REDACTED] \times 2.15 = \$ [REDACTED]$)

The same process was followed for Petitioner's son's earned income. The two paystubs of \$ [REDACTED] and \$ [REDACTED] are added together to determine gross monthly income and then averaged to determine biweekly pay and then multiplied by 2.15. ($\$ [REDACTED] + \$ [REDACTED] = \$ [REDACTED] \div 2 = \$ [REDACTED] \times 2.15 = \$ [REDACTED]$) Thus, the total group income is \$ [REDACTED] ($\$ [REDACTED] + \$ [REDACTED] = \$ [REDACTED]$). Based upon the information provided, the Department did not demonstrate that it correctly calculated gross income as it determined the gross income to be \$ [REDACTED]. Exhibit A. Based upon this error, the Department must recalculate the Petitioner's FAP benefits for [REDACTED].

In addition, the Department did not properly verify the Petitioner's property taxes when it asked for the most current tax bill during an interview with Petitioner at redetermination. The Petitioner credibly testified that she followed those instructions and was unaware and not told to provide her annual tax bill expense. Property taxes are part of allowable shelter expenses and are included as expenses to determine the excess shelter deduction amount, which is then deducted from the FAP groups' adjusted gross income. The annual property taxes are used and are divided by 12, to determine the monthly property tax amount. BEM 554.

Department policy provides:

Allow a shelter expense when the FAP group has a shelter expense or contributes to the shelter expense. Do **not** prorate the shelter expense even if the expense is shared. Shelter expenses are allowed when billed. The expenses do **not** have to be paid to be allowed. BEM 554 (October 1, 2016, p. 12.

Property taxes, state and local assessments and insurance on the structure are allowable expenses. Do **not** allow insurance costs for the contents of the structure, for example, furniture, clothing and personal belongings. BEM 554 (October 1, 2016), p.13.

In addition, at redetermination after the interview, the Department policy provides that a verification checklist be sent:

Verifications must be provided by the end of the current benefit period **or** within 10 days after they are requested, whichever allows more time. If the tenth day falls on a weekend or holiday, the verification will not be due until the next business day.

Note: The DHS-3503, Verification Checklist, should be sent after the redetermination interview for any missing verifications allowing 10 days for their return. BAM 210, (July 1, 2016), p. 16.

Thus, based upon the Department's failure to send a verification seeking annual property taxes, the Petitioner was not advised to provide the entire year's tax bill but only the current bill. The Petitioner did not receive the benefit of the winter taxes being included in the property tax calculation, which only included the summer tax amount of \$[REDACTED] which was verified by Petitioner pursuant to the Department's information request.

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 **did not**

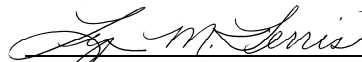
act in accordance with Department policy when it calculated the Petitioner's FAP group income and did not properly verify annual property taxes at the redetermination when determining tax expenses.

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. The Department shall recalculate the Petitioner's FAP group's earned income and redetermine FAP benefits the Petitioner is entitled to receive for [REDACTED].
2. The Department shall seek verification of Petitioner's annual property taxes and redetermine the Petitioner's FAP benefits for [REDACTED] in accordance with Department policy.

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]