



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 29, 2016
MAHS Docket No.: 16-017304
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 Ypsilanti, Michigan. The Petitioner was represented by himself. The Department of Health and Human Services (Department) was represented by [REDACTED], Assistance Payments Worker and [REDACTED], Assistance Payments Supervisor.

ISSUE

1. Did the Department properly reduce the Petitioner's Food Assistance Program (FAP) benefits?
2. Did the Department properly include as unearned income the Petitioner's Veteran's Administration (VA) benefits in the amount of \$[REDACTED] per month?
3. Did the Department properly exclude Petitioner's renter's insurance as a housing expense when calculating housing expense?
4. Did the Department correctly restore the Petitioner's FAP benefits after he requested a hearing?

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 an ongoing recipient of FAP benefits.
2. The Petitioner is an FAP group of one member. The Petitioner pays rent in the amount of \$ [REDACTED] per month and pays for his heat. The Petitioner also receives Social Security income of \$ [REDACTED] and Veteran's Administration (VA) benefits in the amount of \$ [REDACTED] per month. The Petitioner is disabled.
3. In a prior FAP budget, the Department used rent of \$ [REDACTED] per month, which was reduced after the redetermination to \$ [REDACTED] and was confirmed by the Petitioner by verification. Exhibits A and B.
4. The Department improperly included a renter's insurance premium expense of \$ [REDACTED] per month in the Petitioner's housing expenses when reducing the benefits to \$ [REDACTED] in [REDACTED]. Exhibit C.
5. The Department conducted a redetermination scheduled for [REDACTED]. Exhibit A.
6. After the redetermination, the Petitioner's benefits decreased from \$ [REDACTED] per month to \$ [REDACTED] per month. Exhibit D.
7. The Petitioner advised his caseworker on [REDACTED], that his rent was almost \$ [REDACTED] higher; and the net income was correct. The Petitioner reported rent of \$ [REDACTED] on the completed Redetermination form. Exhibit E.
8. A Verification Checklist (VCL) was sent to the Petitioner on [REDACTED], seeking rent verification so that once verified, a higher rent amount could be used in the FAP benefit calculation. The verification of rent was due by [REDACTED]. Exhibit F.
9. A Shelter Verification was completed and returned to the Department on [REDACTED], via fax, which confirmed that Petitioner's rent remained \$ [REDACTED]. Exhibit F.
10. The Department sent the Petitioner a Benefit Notice dated [REDACTED], which advised the Petitioner that his FAP benefits were reduced to \$ [REDACTED] beginning [REDACTED]. The Benefit Notice advised that the previous FAP budget incorrectly included homeowner's insurance, and that due to the fact that Petitioner rented his home and did not own it, he was not entitled to an insurance expense deduction. Exhibit G.
11. The Petitioner requested a hearing on [REDACTED], protesting the reduction of his FAP benefits; and his benefits were restored to \$ [REDACTED].
12. The Petitioner requested a second hearing request on [REDACTED], protesting that his FAP benefits had not been reinstated to the previous level of \$ [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 Department reduced the Petitioner's FAP benefits after a Redetermination was completed in [REDACTED]. The benefits were reduced to \$ [REDACTED] effective [REDACTED], due to the fact that the Petitioner's housing costs were reduced from \$ [REDACTED] to \$ [REDACTED] Exhibit D. The large reduction in rent resulted in the Petitioner's total housing expenses being reduced and, therefore, caused his net income to increase as the housing costs deducted from the Petitioner's income were smaller. In addition, the Petitioner also objected to his VA benefits being included in the unearned income used by the Department to determine his FAP benefits. The Petitioner also asserted that his renter's insurance should be included in the housing costs. The Petitioner also claimed that the Department incorrectly reduced his FAP benefits rather than maintaining them at the \$ [REDACTED] level after the redetermination due to his request for hearing being filed.

VA benefits as Income

The Petitioner at the hearing asserted that his compensation received from the VA for disability benefits in the amount of \$ [REDACTED] should not be included as income. Department policy addresses what income must be included when calculating food assistance benefits. Department policy can be found online at: <https://dhhs.michigan.gov/olmweb/ex/html/>. This policy adopted by the Department governs all aspects of benefit eligibility determinations and must be followed and applied consistently in all cases. The policy is based on federal enabling legislation and regulations which appear at the end of the applicable policy.

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

Income is defined in the Glossary of definitions as: benefits or payments measured in money. BPG Glossary (October 1, 2015), p. 33.

Policy found in BEM 503 covers treatment of unearned income, which is income not received from employment. BEM 503 provides as regards social security benefits and VA benefits as follows:

RSDI is a federal benefit administered by the Social Security Administration that is available to retired and disabled individuals, their dependents, and survivors of deceased workers. **Bridges counts the gross benefit amount as unearned income.** BEM 503 (July 1, 2016), p. 27

VETERANS BENEFITS

All Types of Assistance

The Department of Veterans Affairs (VA) has numerous programs that make payments to veterans and their families. The most common types are discussed below.

Pension payments are based on a combination of need, age, and/or nursing home status. Pensions are normally paid monthly. However, the VA may make the payment quarterly, twice a year or annually if the amount is small (less than \$19 per month).

Compensation payments are based on service-connected disability or death.

Bridges counts the gross amount of the pension or compensation as unearned income. BEM 503, p. 35-36.

Based upon the foregoing policy it is determined that the Department properly considered and included as income the Petitioner's VA benefits when calculating the Petitioner's FAP benefits. The total income as determined by the Department based upon Social Security income based on disability (RSDI) in the amount of \$[REDACTED] and VA benefits in the amount of \$[REDACTED] results in monthly income of \$[REDACTED] which is correct. See Exhibit G. This income was reduced by \$[REDACTED] a standard monthly deduction applied to all FAP budgets with a group size of one member. RFT 255. This amount reduces the unearned income to \$[REDACTED] which is referred to as the adjusted gross income. [REDACTED]).

Housing Expenses

Ultimately, the Department determined that the Petitioner's housing costs consisted of \$[REDACTED] in rent and the heat and utility (h/u) allowance of \$[REDACTED] due to the fact that the Petitioner pays for heat. RFT 255. The total housing cost are \$[REDACTED] a month. [REDACTED]). BEM 554 (June 1, 2016), p. 26. Exhibits D and G.

When calculating the FAP benefits after the redetermination which caused the benefits to be reduced to \$[REDACTED] the Department erred as it included \$[REDACTED] in renter's insurance when calculating housing expenses. This was an error by the Department as policy found in BEM 554 provides that when budgeting FAP housing expenses, renter's

insurance is not allowed, only insurance on a home owned by an FAP recipient may be deducted. BEM 554 (June 1, 2016), p. 13. When the expense for renter's insurance is removed from the FAP budget, it causes a \$[REDACTED] reduction in FAP benefits. Housing costs are \$[REDACTED] as explained in the preceding paragraph, not \$[REDACTED] the amount if the renter's insurance is included. This error was corrected by the Benefit Notice sent to the Petitioner on [REDACTED], which further reduced Petitioner's FAP benefits from \$[REDACTED] to \$[REDACTED] dollars as discussed below.

FAP Benefit Calculation

The deductions to income on the net income budget were also reviewed. The ones that are applicable are excess shelter and standard deduction.

- 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), p. 1- 30; BEM 556 (July 2013), p. 4-5.

When calculating FAP benefits, the final net income, once determined, dictates the FAP benefit amount based upon the Food Assistance Issuance Tables found in RFT 260 (October 1, 2016), p. 8. The tables look at group size and net income amount to determine the correct FAP benefit amount. The adjusted gross income of \$[REDACTED] is used and housing expenses are also utilized to determine net income. Rent is a housing expense. BEM 554, p. 12. In addition, the h/u standard covers all heat and utility costs including cooling, **except** actual utility expenses, for example, installation fees, etc. BEM 554, p 14. FAP groups that qualify for the h/u standard **do not** receive any other individual utility standards. No verification of the other utility standards is necessary if the household is already eligible for the h/u standard. BEM 554, p. 15. The current h/u standard is \$[REDACTED] which was used in Petitioner's FAP budget. RFT 255 (October 1, 2016), p. 1.

The total housing expenses of \$[REDACTED] are reduced by subtracting one half the adjusted gross income, which determines the amount of the shelter expenses, which results in the excess shelter deduction. One half the adjusted gross income is \$[REDACTED] (\$[REDACTED] = \$[REDACTED]). The housing expenses \$[REDACTED] minus \$[REDACTED] results in an excess shelter deduction of \$[REDACTED] (\$[REDACTED] - \$[REDACTED] = \$[REDACTED]). The excess shelter deduction is then deducted from the adjusted gross income of \$[REDACTED] and results in net income of \$[REDACTED] (\$[REDACTED] - \$[REDACTED] = \$[REDACTED]). Exhibit H. BEM 556 (July1, 2013), p. 5.

Based upon net income of \$[REDACTED] the FAP benefits are \$[REDACTED]. Thus, the benefits as ultimately calculated by the Department are correct. RFT 255.

The final issue concerns the Petitioner's request that his previous benefit amount of \$ [REDACTED] be maintained while his request for hearing was pending. Petitioner filed two hearing requests in this matter. The first hearing request is dated [REDACTED]; and the second hearing request is dated [REDACTED]. As regards the second hearing request, the Department has demonstrated that it reinstated the Petitioner's FAP benefits to \$ [REDACTED] because the hearing request was timely filed and challenged the \$ [REDACTED] FAP benefit reduction to \$ [REDACTED] resulting from the removal of renter's insurance. This was a negative action; and as such, the Department was required to maintain the benefit level. BAM 600 (October 1, 2016), p. 24.

As regards the Petitioner's contention that the Department should have restored FAP benefits to the \$ [REDACTED] benefit level after receiving the Petitioner's [REDACTED], hearing request, as a result of the reduction of FAP to \$ [REDACTED], a further analysis of policy is required as the reduction resulted from a redetermination. Department policy provides that the client is not entitled to restoration of benefits pending the hearing when the reason for the hearing request is a change at redetermination. BAM 600 (October 1, 2016), p. 24. In this case, the Department processed the redetermination and certified a new benefit period and a new benefit amount beginning [REDACTED], ongoing. BEM 220 (October 1, 2016), p. 11 provides:

FAP Only

Reducing a FAP group's benefits at redetermination is treated as a **positive action** because the change affects the new certification, **not** the current benefit period.

In general, such actions are not subject to benefit restoration at the prior level as the redetermination begins a new benefit period and certifies a new benefit amount; thus, the old benefit period having expired, can no longer be used to restore benefits. See BAM 600, (October 1, 2016), p. 24. In addition, although the Department did not provide evidence that a Notice of Case Action was sent to the Petitioner advising the Petitioner of the new certified benefit amount of \$ [REDACTED] effective [REDACTED], this is determined to be harmless error by the Department. Clearly, if Petitioner's FAP benefits had been continued as requested at the \$ [REDACTED] level, the benefits would have had to be **repaid by the Petitioner** because based upon this Hearing Decision, it is determined that the Petitioner is no longer entitled to FAP benefits in the amount of \$ [REDACTED] and that the Department properly reduced the FAP benefits. BAM 600 provides in that regard:

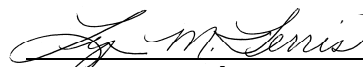
If a hearing request is filed timely and program benefits are restored, recoup overissuances if: The hearing decision upholds the Department's action. BAM 600 (October 1, 2016), p. 26.

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 acted in accordance with Department policy when it reduced the Petitioner's FAP benefits and did not restore benefits to the prior \$ [REDACTED] level after redetermination. The Department also correctly removed the renter's insurance as a housing expense and properly restored FAP benefits after receiving the [REDACTED], second hearing request.

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

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]