



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: January 25, 2017
MAHS Docket No.: 16-018045
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Darryl Johnson

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 January 5, 2017, from Lansing, Michigan. The Petitioner was represented by himself, and his fiancé, [REDACTED] [REDACTED]. The Department of Health and Human Services (Department) was represented by Family Independence Manager [REDACTED] [REDACTED].

ISSUE

Did the Department properly reduce 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. Petitioner was an on-going FAP recipient who was receiving \$ [REDACTED] per month in FAP benefits.
2. Petitioner's household consists of five people.

3. Petitioner's fiancé¹ receives earned income from delivering newspapers, and when she filed her federal taxes she reported her income as "Net Profit from Business". Exhibit A Page 47.
4. The Department had been basing Petitioner's FAP on self-employment income that included an unspecified deduction which was reducing her earned income by \$ [REDACTED] per month (Page 45) plus supplies of \$ [REDACTED] per month.
5. Petitioner was receiving \$ [REDACTED] in FAP based upon self-employment income of \$ [REDACTED] and countable unearned income of \$ [REDACTED] combined with an excess shelter deduction of \$ [REDACTED] (Pages 37-39.)
6. Petitioner submitted tax records which included a copy of [REDACTED] 2015 1099-MISC which stated her gross income was \$ [REDACTED] for that tax year.
7. [REDACTED] is paid \$ [REDACTED] per week (Pages 52-53) and she pays all of her vehicle expenses along with the cost of other supplies.
8. On November 9, 2016, the Department mailed to Petitioner a Notice of Case Action (Pages 4-7) informing him that his FAP was going to be reduced to \$ [REDACTED] per month beginning December 1, 2016, based upon earned income of \$ [REDACTED] per month, unearned income of \$ [REDACTED] per month, a \$ [REDACTED] standard deduction, a \$ [REDACTED] deduction for child support payments, housing costs of \$ [REDACTED] and a \$ [REDACTED] heat/utility standard.
9. Petitioner is paying \$ [REDACTED] per month in land contract payments (Page 28), home owner's insurance of \$ [REDACTED] per month (Page 33), and property taxes of \$ [REDACTED] per month (Page 34).
10. On November 29, 2016, the Department received Petitioner's hearing request, protesting the FAP award.

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

¹ Petitioner identified [REDACTED] as his fiancé during the hearing. On tax returns, he and she use the filing status of "Married filing jointly." Exhibit A Page 48. It is not clear what their actual relationship status is.

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, Petitioner's live-together-partner, [REDACTED], is delivering newspapers as a source of income.

Per BEM 502 (1/1/17) p. 3, "Allowable expenses (except MAGI related MA) are the higher of 25 percent of the total proceeds, or actual expenses if the client chooses to claim and verify the expenses." [REDACTED] drives tens of thousands of miles per year. She has to purchase plastic bags and rubber bands for the papers. Other than having a deadline by which the papers must be delivered, she is able to set his own hours.

BEM 501 (7/1/16) p. 6 provides the Department's policy with respect to earned income. For all types of assistance, "Wages are the pay an employee receives from another individual organization or S-Corp/LLC. Wages include salaries, tips, commissions, bonuses, severance pay and flexible benefit funds not used to purchase insurance." As stated in BEM 502, p 1, "Individuals who run their own businesses are self-employed. This includes but is not limited to selling goods, farming, providing direct services, and operating a facility that provides services such as adult foster care home or room and board." Continuing at pages 1-2, BEM 502 explains:

It is sometimes difficult to determine if an individual's income should be entered in the earned income or self-employment LUW. Make a determination based on available information and document your rationale. Use the following guidelines to help make that determination; consider the following to be indicators of self-employment:

- The individual sets own work hours.
- The individual provides own tools used on the job.
- The individual is responsible for the service being provided and for the methods used to provide the service.
- The individual collects payment for the services provided from the individual paying for them.

A client need not meet all of the above to be considered self-employed.

BEM 502 provides an example of someone who is self-employed. "Joe has a contract with the local hospital to provide snow removal services. He drives his own snow removal vehicle and pays for his own gas. The hospital pays him directly based on the number of times his services are used. Joe is self-employed."

[REDACTED] provides her own tools used on the job. She is responsible for the service being provided (newspaper delivery) and for the methods used to provide the service. This is similar to the example mentioned above. Instead of a snowplow moving snow,

she uses a car to move newspapers. She pays for her own gas and maintenance. The newspaper pays her a weekly rate based on deliveries, and not based on hours. Because of these factors, the evidence establishes that she is self-employed. The Department should allow her to deduct expenses as provided in BEM 502 at pages 3-4:

Allowable expenses include all of the following:

- Identifiable expenses of labor, stock, raw material, seed, fertilizer, etc.
- Interest and principal on loans for equipment, real estate or income-producing property.
- Insurance premiums on loans for equipment, real estate and other income-producing property.
- Taxes paid on income-producing property.
- Transportation costs while on the job (example: fuel).
- Purchase of capital equipment.
- A child care provider's cost of meals for children. Do **not** allow costs for the provider's own children.
- Any other identifiable expense of producing self-employment income except those listed below.

In the hearing summary, the Department stated, "No expenses of employment were allowed and were not requested. Counting [the fiancé's] income as self-employment gives her a \$[REDACTED] deduction per month from the initial gross plus the standard \$[REDACTED] earned income deduction; whereas if the income was counted as employment, she would see a 20% reduction from the gross (\$[REDACTED]). That conflicts with the Notice of Case Action which lists her income as "earned income" and not "self-employment income" (Page 5).

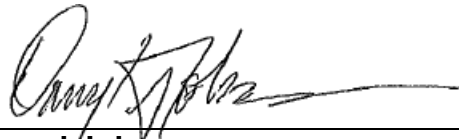
Inexplicably, even though [REDACTED] drives a car to deliver the papers, she has not taken any deduction for mileage in Part III of her Net Profit form (Page 47). The tax form was prepared by a professional tax and accounting firm.

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 considered Petitioner's fiancé's earnings from the newspaper to be employment income instead of income from self-employment. It also erred by only including \$[REDACTED] as housing costs when the evidence establishes that the household is also paying for taxes and insurance.

DECISION AND ORDER

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

1. Redetermine Petitioner's FAP eligibility, effective December 1, 2016;
2. Issue a supplement to Petitioner for any benefits improperly not issued.



DJ/mc

Darryl Johnson
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]