



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
Christopher Seppanen  
Executive Director

SHELLY EDGERTON  
DIRECTOR

██████████  
██████████  
██████████

Date Mailed: January 17, 2017  
MAHS Docket No.: 16-018266

██████████  
██████████

**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 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 11, 2017, from Lansing, Michigan. Petitioner personally appeared and testified.

The Department of Health and Human Services (Department) was represented by Family Independence Manager ██████████ and Eligibility Specialist ██████████. ██████████ and ██████████ testified on behalf of the Department. The Department submitted ██████ 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) allotment?

**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 submitted updated pay stubs to the Department on November 3, 2016. [Dept. Exh. 1].
2. On November 22, 2016, the Department issued a Notice of Case Action informing Petitioner that her FAP allotment had increased to ██████████ a month, effective December 1, 2016.

3. On December 2, 2016, Petitioner submitted a Request for Hearing, contesting the [REDACTED] FAP allotment.
4. The Eligibility Specialist testified that after the hearing was scheduled, the Department received updated November pay stubs from Petitioner. The Eligibility Specialist stated that the Department had not recalculated Petitioner's FAP allotment because the Petitioner had indicated she wanted to continue receiving FAP benefits pending the hearing.
5. On January 11, 2017, the Department submitted the November paystubs into evidence. [Dept. Exh. B].

### **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.

For FAP purposes, all earned and unearned income available to Petitioner is countable. Earned income means income received from another person or organization or from self-employment for duties that were performed for compensation or profit. BEM 500, pp 3-4 (1/1/2016). Unearned income means all income that is not earned, including but not limited to funds received from the Family Independence Program (FIP), State Disability Assistance (SDA), Child Development and Care (CDC), Medicaid (MA), Social Security Benefits (RSDI/SSI), Veterans Administration (VA), Unemployment Compensation Benefits (UCB), Adult Medical Program (AMP), alimony, and child support payments. BEM 500, p 4. *The amount counted may be more than the client actually receives because the gross amount is used prior to any deductions.* BEM 500, p (1/1/2016)(Emphasis added).

The Department determines a client's eligibility for program benefits based on the client's actual income and/or prospective income. BEM 505, p 1 (7/1/2016). Actual income is income that was already received. *Id.* Prospective income is income not yet received but expected. *Id.* Prospective budgeting is the best estimate of the client's future income. *Id.*

All income is converted to a standard monthly amount. If the client is paid weekly, the Department multiplies the average weekly amount by 4.3. *Id.* at 9. If the client is paid every other week, the Department multiplies the average bi-weekly amount by 2.15. *Id.*

In this case, Petitioner contended that the FAP allotment of [REDACTED] was incorrect because the Department had relied on paystubs from October for her December allotment and her hours had been reduced since the calculation. The Department indicated that it had received Petitioner's November paystubs, but had not processed them, pending the outcome of this hearing.

Regarding the [REDACTED] FAP allotment from the October paystubs, the Department properly calculated the amount using those paystubs. However, since Petitioner's hours were cut, to determine what Petitioner should be receiving beginning in December, the Department must use the November paystubs. BEM 505, p 7. Since the Department now has the paystubs from November, 2016 showing Petitioner's reduced hours, the Department needs to redetermine Petitioner's FAP eligibility based on the November paystubs.

Additionally, Petitioner requested a new case worker. Regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in Mich Admin Code, R 792.10101 to R 792.10137 and R 792.11001 to R 792.11020. Rule 792.11002(3) provides as follows:

A complaint as to alleged misconduct or mistreatment by a state employee shall not be considered through the administrative hearing process, but shall be referred to the agency customer service unit.

Therefore, this Administrative Law Judge is unable to address Petitioner's complaints regarding her worker.

### **DECISION AND ORDER**

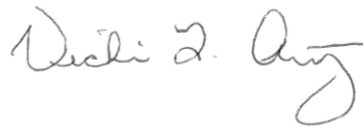
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it used Petitioner's October paystubs to determine Petitioner's ongoing FAP allotment for December, 2016.

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to calculating the amount of [REDACTED] based on paystubs received and **REVERSED IN PART** with respect to Petitioner's proper FAP allotment based on the November, 2016 paystubs reflecting a change in Petitioner's hours.

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. Redetermine Petitioner's FAP allotment using the November, 2016 paystubs.
2. Issue a Notice of Case Action to Petitioner indicating the results of the redetermination.



**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]  
 [Redacted]