



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 6, 2017  
MAHS Docket No.: 16-018282  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Eric J. Feldman**

### **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, [REDACTED], represented himself at the proceeding. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearings Facilitator. [REDACTED] served as translator during the hearing.

### **ISSUE**

Did the Department properly calculate Petitioner's Food Assistance Program (FAP) allotment effective [REDACTED]?

### **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 is an ongoing recipient of FAP benefits.
2. On [REDACTED], the Department received verification of Petitioner's shelter verification (lease agreement), which showed his monthly rental obligation was \$ [REDACTED].
3. On [REDACTED], the Department received verification of Petitioner's electrical/heat bill.

4. Petitioner resides with his two adult children who are not eligible to receive FAP assistance because they have not lived in the United States as qualified aliens for at least five years since their date of entry.
5. On [REDACTED], the Department received verification of Petitioner's employment income. Exhibit A, p. 9.
6. On [REDACTED], the Department received verification of Petitioner's assets and employment. Exhibit A, pp. 3-4 and 7-8.
7. On [REDACTED], the Department sent Petitioner a Notice of Case Action notifying him that his FAP benefits closed.
8. On [REDACTED], the Department received additional verification of Petitioner's assets. Exhibit A, p. 5.
9. On [REDACTED], the Department sent Petitioner a Notice of Case Action notifying him that his FAP benefits would continue to be \$ [REDACTED] for the period of [REDACTED]. Exhibit A, pp. 12-13.
10. For [REDACTED], the Department calculated Petitioner's housing expenses to be zero; and he was only eligible for the \$ [REDACTED] telephone standard deduction. Exhibit A, p. 13.
11. On [REDACTED], Petitioner filed a hearing request, protesting the Department's action. Exhibit A, p. 1.
12. On [REDACTED], the Department sent Petitioner a Notice of Case Action notifying him that his FAP benefits were approved for \$ [REDACTED] effective [REDACTED]. Exhibit A, pp. 15-17.
13. Effective [REDACTED], the Department calculated Petitioner's housing expenses to be \$ [REDACTED] and he was eligible for the \$ [REDACTED] mandatory heat and utility standard deduction. Exhibit A, p. 16.

### 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.

### Preliminary matters

First, Petitioner requested a hearing in which he disputed the following: (i) the closure of his FAP benefits; and (ii) the calculation of his \$ [REDACTED] FAP allotment. Exhibit A, p. 1. In regards to the closure of Petitioner's FAP benefits, this issue has been resolved because the Department subsequently reinstated his benefits, which resulted in no lapse in coverage. As such, there is nothing further the undersigned Administrative Law Judge (ALJ) can address as it relates to the closure of his benefits. Petitioner, though, also disputed the calculation of \$ [REDACTED] FAP allotment. The evidence established that Petitioner received \$ [REDACTED] in FAP benefits for [REDACTED]. Exhibit A, p. 12. Therefore, the undersigned ALJ will address below Petitioner's FAP allotment for [REDACTED].

Second, it was discovered that Petitioner's FAP benefits increased to \$ [REDACTED] effective [REDACTED]; and the Department sent him notice of this approval amount on [REDACTED]. Exhibit A, pp. 15-17. Unfortunately, the undersigned ALJ is unable to address Petitioner's FAP allotment for [REDACTED] because this action occurred after his hearing request. Petitioner must request another hearing if he disputes the calculation of his \$ [REDACTED] FAP allotment effective [REDACTED]. See BAM 600 (October 2016), p. 6 (The client or Authorized Hearing Representative (AHR) has 90 calendar days from the date of the written notice of case action to request a hearing. The request must be received in the local office within the 90 days).

### [REDACTED] benefits

In the present case, Petitioner disputed the amount of his FAP allotment for [REDACTED]. As such, the undersigned ALJ reviewed the [REDACTED] budget from the Notice of Case Action dated [REDACTED]. Exhibit A, pp. 12-13.

First, the Department indicated that Petitioner's certified group size was one, and that he was not considered to be senior/disabled/disabled veteran (SDV) member. Exhibit A, p. 12. However, Petitioner claimed that his group size should be two, which included his two adult children, ages [REDACTED] and [REDACTED]. But, the undersigned ALJ determined that the adult children would not be eligible for FAP assistance because they have not lived in the U.S. as qualified aliens for at least five years since their date of entry. The evidence and testimony by both parties established the following: (i) Petitioner's adult daughter is [REDACTED] years old; she is a permanent resident alien; her date of entry was [REDACTED] and her category code is IR2; and (ii) Petitioner's adult son is [REDACTED] years old; he is a permanent resident alien; his date of entry was [REDACTED]; and his category code is IR2.

Based on this information, the adult children would not be eligible for FAP benefits because they have not resided in the U.S. for at least five years nor are they qualified

aliens who are under [REDACTED] years of age. See BEM 225 (October 2016), pp. 10-11. It should be noted, though, that the adult son will be in the U.S. for five years on or about [REDACTED] (entered in [REDACTED]); thus, the adult son might be eligible for FAP assistance starting in [REDACTED]. See BEM 225, p. 11.

Once the Department determines the group size, the Department calculates Petitioner's total income. In this case, the Department calculated Petitioner's gross earned income to be \$ [REDACTED] which he did not dispute. Exhibit A, p. 13, and BEM 505 (July 2016), pp. 1-16.

Then, once the Department adds together the total income Petitioner receives, the Department will minus any deductions that he might qualify for. See Exhibit A, p. 13. The first deduction the Department properly applied was the \$ [REDACTED] standard deduction applicable to Petitioner's group size of one. Exhibit A, p. 13 and RFT 255 (October 2016), p. 1. Moreover, the evidence established that Petitioner did not qualify for any of the dependent care, medical, and child support deductions. Exhibit A, p. 13.

Next, the Department also provides Petitioner with a shelter deduction, which consists of housing expenses and utility expenses. For the [REDACTED] shelter budget, the Department did not provide Petitioner with any housing expenses. Exhibit A, p. 13. During the hearing, the undersigned ALJ determined that this was incorrect and Petitioner should be eligible for \$ [REDACTED] in housing expenses. The Department indicated that on [REDACTED], the Department received verification of Petitioner's shelter verification (lease agreement), which showed his monthly rental obligation was \$ [REDACTED]

Housing expenses include rent, mortgage, a second mortgage, home equity loan, required condo or maintenance fees, lot rental or other payments including interest leading to ownership of the shelter occupied by the FAP group. BEM 554 (June 2016), pp. 12-13. The expense must be a continuing one. BEM 554, p. 13. Payments that exceed the normal monthly obligation are not deductible as a shelter expense unless the payment is necessary to prevent eviction or foreclosure, and it has not been allowed in a previous FAP budget. BEM 554, p. 13. Additional expenses for optional charges, such as carports, pets, etc. are not allowed. BEM 554, p. 13.

The Department verifies shelter expenses at application and when a change is reported. BEM 554, p. 14. If the client fails to verify a reported change in shelter, remove the old expense until the new expense is verified. BEM 554, p. 14. Verify the expense and the amount for housing expenses, property taxes, assessments, insurance and home repairs. BEM 554, p. 14. Acceptable verification sources include a current lease. BEM 554, p. 14.

Based on the above information, the Department did not act in accordance with Department policy when it improperly calculated Petitioner's housing expenses. The evidence established that the Department had verification of Petitioner's housing expenses, which was a lease agreement showing his monthly rental obligation was \$ [REDACTED]. This verification was received prior to the [REDACTED] benefit month at issue. As such, the Department will recalculate Petitioner's FAP benefits and ensure that his

housing expenses are \$ [REDACTED] for [REDACTED] in accordance with Department policy. See BEM 554, pp. 12-14.

Finally, Petitioner's shelter budget showed that he was not receiving the \$ [REDACTED] mandatory heat and utility (h/u) standard, but only the \$ [REDACTED] telephone standard deduction. Exhibit A, p. 13. However, the undersigned ALJ disagrees. Similar to Petitioner's housing expenses, the Department also received verification of Petitioner's electrical/heat bill on [REDACTED], which was before the benefit month at issue. Because Petitioner is responsible for the electrical/heat expenses, he is eligible for the \$ [REDACTED] mandatory h/u standard, which encompasses all utilities (water, gas, electric, telephone) and is unchanged even if a client's monthly utility expenses exceed the \$ [REDACTED] amount. See BEM 554, pp. 14-16; and RFT 255, p. 1. As such, the Department will apply Petitioner's mandatory h/u standard to be \$ [REDACTED] for [REDACTED].

In summary, because the Department did not act in accordance with Department policy when it calculated Petitioner's shelter expenses (including housing expenses and mandatory h/u), the Department is ordered to recalculate Petitioner's FAP budget for [REDACTED].

It should be noted that for [REDACTED], ongoing, the Department updated Petitioner's shelter expenses as follows: (i) \$ [REDACTED] in housing expenses; and (ii) receiving the \$ [REDACTED] mandatory h/u. Exhibit A, p. 16. Thus, it initially appears that the Department properly updated Petitioner's shelter expenses effective [REDACTED], ongoing.

### 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 improperly calculated Petitioner's FAP allotment for [REDACTED].

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. Recalculate Petitioner's FAP budget (including shelter expenses) for a group size of one for [REDACTED];
2. Apply Petitioner's housing expenses to be \$ [REDACTED] effective [REDACTED];

3. Apply Petitioner's mandatory heat and utility (h/u) standard to be \$ [REDACTED] effective [REDACTED];
4. Issue supplements to Petitioner for any FAP benefits he was eligible to receive but did not from [REDACTED]; and
5. Notify Petitioner of its decision.

EJF/jaf



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**Eric J. Feldman**  
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]