



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: January 11, 2017
MAHS Docket No.: 16-018483
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, an in-person hearing was held on January 9, 2017, from Ypsilanti, Michigan. The Petitioner was present at the hearing and represented herself. The Department of Health and Human Services (Department) was represented by [REDACTED], Family Independence Specialist; and [REDACTED]-[REDACTED], Family Independence Manager.

ISSUE

Did the Department properly decrease Petitioner's Food Assistance Program (FAP) benefits to [REDACTED] effective December 1, 2016?

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. Prior to the decrease, Petitioner received [REDACTED] in monthly FAP benefits. Exhibit A, p. 19.
3. Petitioner income consisting of the following: (i) Supplemental Security Income (SSI); (ii) Retirement, Survivors and Disability Insurance (RSDI); and State SSI Payments (SSP) ([REDACTED] issued quarterly).

4. When reviewing Petitioner's FAP budget for November 2016, the Department discovered that it had not been budgeting her RSDI income. Exhibit A, pp. 1 and 8-10.
5. Once the Department corrected this error by budgeting Petitioner's RSDI income, this resulted in a decrease in her benefits.
6. Petitioner's FAP benefits reduced to [REDACTED] effective December 1, 2016.
7. On October 31, 2016, the Department received a shelter verification showing that her monthly rent is [REDACTED] effective December 1, 2016. Exhibit A, p. 18.
8. For December 2016, Petitioner's monthly housing expense (rental) is [REDACTED]. Exhibit A, p. 18.
9. Petitioner's rental statement indicated she is also responsible to pay for the following expenses: (i) allocated water service; (ii) allocated sewer service; (iii) trash service; (iv) energy to heat water and space heating; and (iv) admin fees. Exhibit 1, p. 3.
10. These additional expenses are not part of Petitioner's rental obligation and are considered utility expenses.
11. The Department budgets Petitioner's additional utility expenses by providing her with the maximum [REDACTED] mandatory heat and utility (h/u) standard deduction that she is eligible to receive. Exhibit A, p. 7.
12. On December 8, 2016, Petitioner filed a hearing request, protesting the decrease in her FAP benefits effective December 2016. Exhibit A, p. 2.

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.

It was not disputed that the certified group size is one and that Petitioner is a senior/disabled/disabled veteran (SDV) member. The Department presented the December 2016 FAP budget for review. Exhibit A, pp. 5-6.

First, the Department calculated Petitioner's gross unearned income to be [REDACTED], which she disputed. Exhibit A, p. 5. The Department testified that this amount consisted of Petitioner's SSI income, RSDI income, and her monthly average in SSP income. See Exhibit A, pp. 12-16 and see BEM 503 (July 2016), pp. 28-33. In response, Petitioner testified that her gross unearned income should have been one dollar less, [REDACTED] which consisted of the following amounts: (i) [REDACTED] in SSI income; (ii) [REDACTED] in RSDI income; (iii) her [REDACTED] monthly average in SSP income. See Exhibit A, pp. 12-16. The undersigned Administrative Law Judge (ALJ) reviewed Petitioner's argument that her gross income should have been [REDACTED] and found it persuasive. Nevertheless, the undersigned ALJ finds this to be harmless error by the Department for not budgeting her gross income to be [REDACTED]. The decrease in Petitioner's gross income would have made no difference in the amount of FAP benefits she was eligible to receive. Even if the Department budgeted Petitioner's gross income to be [REDACTED], she still would only be eligible to receive [REDACTED] in benefits for December 2016. See RFT 260 (October 2016), p. 3. As such, the undersigned ALJ finds that the Department properly calculated Petitioner's gross income to be [REDACTED].

Then, once the Department determines Petitioner's total income, it will minus any deductions that she 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. 5 and RFT 255 (October 2016), p. 1. Petitioner also did not dispute that the dependent care, medical, and child support deductions were calculated as zero. See Exhibit A, p. 5. Next, the Department subtracts the [REDACTED] standard deduction from the total income, which results in an adjusted gross income of [REDACTED]. Exhibit A, pp. 5-6.

Additionally, the Department provides Petitioner with a shelter deduction, which consists of her housing expenses (rental obligation in this case) and utility expenses. The Department presented Petitioner's FAP – Excess Shelter Deduction (shelter budget) for December 2016. Exhibit A, p. 7. The shelter budget showed that Petitioner's housing expenses for December 2016 was [REDACTED], which she disputed. Exhibit A, p. 7.

Petitioner testified that her rent is higher than [REDACTED]. Petitioner indicated that her rent is [REDACTED] plus additional costs consisting of the following: (i) allocated water service; (ii) allocated sewer service; (iii) trash service; (iv) energy to heat water and space heating; and (v) admin fees. In fact, Petitioner provided a rental statement showing these additional costs she must pay for, including a [REDACTED] admin fee. Exhibit 1, p. 3.

In response, the Department disagreed with Petitioner's argument. The Department testified that her rent is [REDACTED]. The Department indicated these additional costs that she is responsible to pay for are considered utility expenses. The Department argued that it

budgets these utility expenses by providing her with the mandatory h/u standard deduction. Exhibit A, p. 7.

Furthermore, there was lengthy discussion during the hearing as to whether the [REDACTED] admin fee should be included in the rental obligation or if it considered a utility expense. On or about January 8, 2017, the Department testified that it contacted Petitioner's apartment complex and verified that the [REDACTED] admin fee is not from the apartment complex, but part of the water/sewage fee from "NWP services corporation." Exhibit 1, p. 3. Thus, the Department argued that the admin fee is considered a utility expense.

Petitioner disagreed and argued that the admin fee is part of her rent. In fact, Petitioner took her cellphone out during the hearing and contacted the company, "NWP services corporation" on her rental statement to clarify the admin fee. See Exhibit 1, p. 3. Petitioner got ahold of a customer service representative and wanted that individual to act as her witness, but the customer service rep refused to be under oath to testify and transferred the call to the supervisor. But at this point, the undersigned ALJ did not allow Petitioner to continue with the phone call as it was delaying the hearing and the potential witness was not present at the hearing/subject to cross-examination. See BAM 600 (October 2016), p. 36 (Both the local office and the client or Authorized Hearing Representative (AHR) must have adequate opportunity to present the case, bring witnesses, establish all pertinent facts, argue the case, refute any evidence, cross-examine adverse witnesses, and cross-examine the author of a document offered in evidence).

Finally, both parties presented documents to support its argument of whether the additional expenses should be included in the rental obligation or not. See Exhibit A, p. 18; Exhibit B, pp. 1-2; and Exhibit 1, pp. 1-3.

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.

Based on the above information, the undersigned ALJ finds that the Department properly calculated Petitioner's housing expenses (rent) to be \$[REDACTED] in accordance with Department policy. The evidence established that Petitioner's monthly rental obligation for December 2016 was [REDACTED] Exhibit A, p. 18. Petitioner's additional expenses are not part of her rental obligation and are considered utility expenses, including the admin fee. The undersigned ALJ finds the Department's testimony credible that it had collateral contact with Petitioner's apartment complex who verified that the admin fee is a utility expense. The Department's testimony is supported by Petitioner's own Shelter Verification (DHS-3688) form that she submitted on January 4, 2017. Exhibit B, pp. 1-2.

This form stated that her rent is [REDACTED] “plus [REDACTED] for communal *utilities*.” Exhibit B, p. 1 (emphasis added). The undersigned ALJ emphasizes the word “utilities” because this supports the Department’s argument that the additional expenses are utility expenses, including the admin fee, and are not part of her rental obligation. Instead, the Department budgets Petitioner’s additional utility expenses by providing her with 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 Exhibit A, p. 7; BEM 554, pp. 14-16; and RFT 255, p. 1.

Finally, the total shelter obligation is calculated by adding Petitioner’s housing expenses to the utility credit; this amount is found to be [REDACTED] Exhibit A, p. 7. Then, the Department subtracts the total shelter amount from fifty percent of the [REDACTED] adjusted gross income. Fifty percent of the adjusted gross income is [REDACTED] (rounded-up). Exhibit A, p. 7. When the Department subtracts the total shelter amount from fifty percent of the gross income, the excess shelter amount is found to be [REDACTED] Exhibit A, p. 7.


The Department then subtracts the [REDACTED] adjusted gross income from the [REDACTED] excess shelter deduction, which results in a net income of [REDACTED]. Exhibit A, p. 6. A chart listed in RFT 260 is used to determine the proper FAP benefit issuance. Based on Petitioner’s group size and net income, the Department properly determined that Petitioner’s FAP benefit issuance is found to be [REDACTED] effective December 1, 2016. RFT 260, p. 3.

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 decreased Petitioner’s FAP benefits to [REDACTED] effective December 1, 2016.

Accordingly, the Department’s FAP decision is **AFFIRMED**.

EF/tm



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]
[REDACTED]
[REDACTED]
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