



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

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Date Mailed: January 27, 2017  
MAHS Docket No.: 16-018812  
Agency No.: ██████████  
Petitioner: ██████████

**ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun**

**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 18, 2017, from Detroit, Michigan. The Petitioner appeared for the hearing and represented himself. The Department of Health and Human Services (Department) was represented by ██████████, Hearing Facilitator. ██████████, Agency Translator served as ████████ interpreter.

**ISSUE**

Did the Department properly close Petitioner's Food Assistance Program (FAP) case on the basis that his net income exceeded the limit?

**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 ongoing recipient of FAP benefits in the amount of ████████.
2. Petitioner's household consists of himself, his wife, and four children.
3. Petitioner's wife is excluded from the FAP group on the basis that she does not meet the citizenship/alien status requirement.
4. Petitioner receives gross monthly income from a pension in the amount of ██████████ and gross monthly income from Retirement, Survivors and Disability Insurance

(RSDI) benefits in the amount of [REDACTED]. Petitioner's wife and four children each receive monthly RSDI benefits in the amount of [REDACTED]. (Exhibit C; Exhibit D)

5. Petitioner has confirmed housing expenses of [REDACTED] and is responsible for heat and utilities (h/u).
6. Petitioner is responsible for child support expenses on behalf of three children who reside in [REDACTED] in the amount of [REDACTED] per child, per month. (Exhibit E, Exhibit 1)
7. On December 3, 2016, the Department sent Petitioner a Notice of Case Action advising him that effective January 1, 2017, his FAP case would be closed on the basis that his net income exceeded the limit for FAP purposes. (Exhibit A)
8. On December 9, 2016, Petitioner requested a hearing disputing the Department's actions. (Exhibit 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.

In this case, Petitioner requested a hearing disputing the Department's closure of his FAP case based on excess income effective January 2017. At the hearing, the FAP EDG Net Income Results budget was reviewed to determine if the Department properly concluded that Petitioner's net income of [REDACTED] exceeded the limit of [REDACTED] based on his group size. (Exhibit B).

The Department testified that Petitioner's FAP eligibility was calculated based on a group size of five, consisting of himself and his four children. The Department explained that Petitioner's wife is a disqualified member of the FAP group because she failed to meet the citizenship/alien status eligibility requirement. See BEM 225 (October 2016); BEM 212 (October 2015). Petitioner did not dispute that his wife was an ineligible alien and confirmed that she entered the United States on or around February 6, 2012, thus, the Department properly determined that the group size is five.

All countable earned and unearned income available to the client must be considered in determining a client's eligibility for program benefits. BEM 500 (January 2016), pp. 1-5. The Department considers the gross amount of money earned from pensions and from RSDI in the calculation of unearned income for purposes of FAP budgeting. BEM 503 (July 2016), pp. 27-32. The budget shows that the Department concluded that Petitioner's FAP group had unearned income of [REDACTED]. The Department testified that it considered: Petitioner's gross monthly pension in the amount [REDACTED]; Petitioner's RSDI benefit in the amount of [REDACTED] as well as [REDACTED] in RSDI for Petitioner's wife and each of his four children. (Exhibit C; EXHIBIT D).

Additionally, in determining FAP eligibility for groups with disqualified members, the Department is to budget a pro rata share of earned and unearned income of a person who is disqualified for not meeting citizenship/alien status requirements. BEM 550 (January 2017), pp. 2-4. The pro rata share of Petitioner's income is allocated to the FAP household using the following formula: (1) the number of eligible FAP group members is added to the number of disqualified persons that live with the FAP group; (2) the disqualified person's income is divided by the number of persons in step 1; and (3) the result in step 2 is multiplied by the number of eligible FAP group members. BEM 550, pp. 3-4.

In this case, Petitioner and his wife live in the same household with their four minor children. Because Petitioner's wife was disqualified as a FAP group member, the FAP group consists of five people, Petitioner and the children. Thus, only a pro rata share of Petitioner's wife's income is to be budgeted for FAP purposes. Upon further review and based on the figures the Department relied upon, the Department properly determined that Petitioner's group had unearned income of [REDACTED].

The deductions to income on the net income budget were also reviewed. Petitioner's group includes a senior/disabled/veteran (SDV) member of the FAP group. BEM 550 (October 2015), pp. 1-2. Groups with one or more SDV members are eligible for the following deductions to income:

- Dependent care expense.
- Excess shelter.
- Court ordered child support and arrearages paid to non-household members.
- Medical expenses for the SDV member(s) that exceed \$35.
- Standard deduction based on group size.
- An earned income deduction equal to 20% of any earned income.

BEM 554 (January 2017), p. 1; BEM 556 (July 2013), p. 3.

In this case, Petitioner did not have any earned income and there was no evidence presented that the group had any dependent care expenses. Therefore, the budget properly did not include any deduction for dependent care or earned income. With respect to the medical deduction of [REDACTED], the Department testified that this was based

on ongoing medical expenses that had been submitted. The Department properly applied a standard deduction of [REDACTED] based on a group size of five. RFT 255 (October 2016), p.1. In calculating Petitioner's excess shelter deduction, the Department properly considered the [REDACTED] standard heat and utility deduction and Petitioner's confirmed housing expenses of [REDACTED] RFT 255, p. 1. The budget shows a child support deduction of \$0 which Petitioner disputed. Petitioner testified that he is responsible for monthly child support expenses on behalf of his three children who live in [REDACTED], in the amount of [REDACTED] monthly for each child. Although the Department disputed having a record of the expenses and did not include them in the budget, the Department provided a support expenses summary which confirms Petitioner's statement. (Exhibit E). Additionally, Petitioner provided a translated copy of a divorce decree from [REDACTED] which orders Petitioner to pay support for the children. (Exhibit 1).

Department policy provides that Petitioner is eligible for a deduction to income for court ordered child support and arrearages paid to non-household members. BEM 554, p. 1, 6-7. BEM 554 also provides guidance with respect to acceptable verification sources for child support expenses. BEM 554, pp. 6-7. Therefore, because the Department did not consider Petitioner's obligation for child support expenses as a deduction to net income, the Department did not properly calculate Petitioner's net income. As such, the Department did not establish that Petitioner's net income exceeded the limit for FAP purposes.

### **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 closed Petitioner's FAP case based on excess net income.

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. Reinstate Petitioner's FAP case effective January 1, 2017;
2. Recalculate Petitioner's FAP budget for January 1, 2017, ongoing, in accordance with Department policy and in consideration of any applicable child support expenses;

3. Issue FAP supplements to Petitioner for any FAP benefits that the group was eligible to receive but did not from January 1, 2017, ongoing; and
4. Notify Petitioner in writing of its decision.



ZB/tlf

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**Zainab A. Baydoun**

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

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CC: [REDACTED]