



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: March 29, 2017
MAHS Docket No.: 17-000240
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Michael J. Bennane

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 was represented by Petitioner. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearing Facilitator.

ISSUE

Did the Department properly deny the 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. On [REDACTED], an Administrative Hearing was held.
2. On [REDACTED], ALJ Ferris issued a hearing decision ordering the Department to reprocess Petitioner's FAP budget.
3. The Petitioner's FAP benefits for [REDACTED], were reinstated and sent to the Petitioner.
4. The Department denied the Petitioner's FAP benefits from [REDACTED] through [REDACTED] because the Department found that the Petitioner was in student status and had not met the criteria for employment that would have allowed the Petitioner to receive benefits while in student status. (BEM 245, July 1, 2016, p. 4).

5. On [REDACTED], the Petitioner requested a hearing to protest the Department's decision.

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.

The Department read BEM 245 to mean that a recipient had to use either 60 percent of the rental payment or actual rental expenses.

The language of BEM 245 states in pertinent part: "in order for a person, in student status, to be eligible they must meet one of the following criteria: ... Self-employed for at least 20 hours per week and earning weekly income at least equivalent to the federal minimum wage multiplied by 20 hours." (BEM 245, July 2016).

The language of 504 affecting this issue reads: "Bridges counts the gross rent payment minus expenses as earned income from self-employment. Bridges allows the higher of the following: 60% of rental payment or actual expenses if the landlord chooses to claim and verify expenses." (BEM 504, July 2014). p. 2.

In this case, the Department attributes and subtracts 60% of the Petitioner's rental income from the Petitioner's net earned income. This deduction, **allowed** by Department policy, causes the Petitioner to not meet the criteria allowing an individual to be in student status and also receive FAP benefits.

The crux of the issue is whether the Petitioner "**must**" choose either a deduction of 60% of the Petitioner's rental income or actual expenses.

This ALJ finds the wording of BEM 504..."allows the higher of the following:"...to leave open the option of choosing no deduction. The word "allows" does not suggest a mandate to choose one or the other, therefore, allowing the Petitioner to meet BEM 504 criteria for receiving benefits while in student status.

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 read Department policy to mean that the Petitioner had to choose a deduction from her rental income causing the Petitioner to fail to meet the criteria for receiving FAP while in student status.

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 the Petitioner's FAP benefits with the Petitioner meeting the student status criteria back to [REDACTED], and supplement for any missed benefits.

MJB/jaf



Michael J. Bennane
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]

[REDACTED]