



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 7, 2017  
MAHS Docket No.: 17-001607  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris**

**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 himself. An [REDACTED] translator, [REDACTED], appeared on behalf of Petitioner. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearing Facilitator.

**ISSUE**

1. Did the Department properly determine the Petitioner's Food Assistance Program (FAP) benefit amount?
2. Did the Department properly exclude, as an ineligible student, the Petitioner's daughter who was a full-time student?

**FINDINGS OF FACT**

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Petitioner is an ongoing FAP recipient.
2. The Department issued a Notice of Case Action on [REDACTED], decreasing the Petitioner FAP benefits to \$ [REDACTED]. The Notice found the Petitioner's daughter, [REDACTED], not eligible as an ineligible student. Exhibit 4.
3. Petitioner's daughter attends college full-time and does not work.

4. Petitioner is a Supplemental Security Income (SSI) recipient and receives \$ [REDACTED] after deductions, to Petitioner's SSI made by the Social Security Administration (SSA). Exhibit 1.
5. The Petitioner's monthly gross SSI is \$ [REDACTED] before deduction by SSA, and Petitioner receives a \$ [REDACTED] monthly State Supplement (SSP) Payment. Exhibit 5 and Exhibit 1.
6. The Department determined that Petitioner's FAP group consisted of three (3) members and excluded his daughter, who is a full-time student, as an ineligible student. The Petitioner pays \$ [REDACTED] in rent and pays for electricity and received a heat and utility allowance of \$ [REDACTED]. Exhibit 7.
7. The Petitioner requested a timely hearing on [REDACTED].

### **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, the Petitioner sought review of his FAP benefits as they had been reduced by the Department. The Petitioner claimed at the hearing that his daughter, [REDACTED] [REDACTED] who is a full-time student, cannot work due to a heart condition and the fact that she is overweight. In addition, the Petitioner sought a hearing to determine if the FAP benefit amount was correct. The Petitioner's daughter, [REDACTED] is a full-time student and is not working. At the hearing, it was determined that the Petitioner did not provide the Department with a medical statement or other medical proof that his daughter could not work due to a medical condition. Thus, the Department correctly determined based upon the information provided to it by Petitioner that the Petitioner's daughter was an ineligible student because she was not working at least 20 hours a week while in student status, and correctly removed her from the FAP group. As explained at the hearing, the Petitioner may provide medical documentation to support that his daughter cannot work. Department policy provides:

## **FAP Only**

A person is in student status if he is:

- Age 18 through 49 and
- Enrolled half-time or more in a:
  - Vocational, trade, business, or technical school that normally requires a high school diploma or an equivalency certificate.
  - Regular curriculum at a college or university that offers degree programs **regardless** of whether a diploma is required.

In order for a person in student status to be **eligible**, they must meet one of the following criteria:

- Receiving FIP.
- Enrolled in an institution of higher education as a result of participation in:
  - A Job Training Partnership Act (JTPA) program.
  - A program under section 236 of the Trade Readjustment Act of 1974 us 19 USC 2341, et. seq.
  - Another State or local government employment and training program.
- **Physically or mentally unfit for employment.**

BEM 245 (October 1, 2016), p. 5-6

Department policy requires that if a person in student status cannot work due to a medical problem they must provide verification from a doctor or other proofs setforth in BEM 245 which provides:

### **Physically or Mentally Unfit for Employment:**

- Award letter or other verification of eligibility for Retirement, Survivors, and Disability Insurance (RSDI) or Supplemental Security Income (SSI) on the basis of disability.
- Award letter or other verification of eligibility for disability benefits issued by government or private sources.
- Statement from an M.D. or D.O.  
Statement from a psychologist.

BEM 245, p. 12

Thus, because no statement was provided to demonstrate or support the Petitioner's daughter was physically unfit for employment, it is determined that the Department properly removed the Petitioner's daughter from the FAP group. The Petitioner may submit medical documentation as required by BEM 245 to the Department regarding his daughter for their review.

As regards the Petitioner's current benefits, the Department presented an FAP budget FAP EDG Net Income Results at the hearing, which was reviewed as well as an excess shelter calculation. Exhibit 6 and Exhibit 7. The Department correctly determined the group size to be three (3) members as it was determined above that the Department correctly determined the Petitioner's daughter was a full-time student and did not meet any of the requirements to be FAP eligible outlined above. The Department also correctly determined the rent paid was \$ [REDACTED] and gave the Petitioner a utility allowance expense of \$ [REDACTED] based upon his verification that he was eligible for the utility allowance. Exhibit 2. In addition, the Department correctly included the \$ [REDACTED] in monthly income received as a result of the SSP quarterly payment of \$ [REDACTED] Exhibit 5. The Department also provided the correct standard deduction of \$ [REDACTED] for an FAP group of three (3) persons. RFT 255, (October 1, 2016), p. 1.

The only item to be which must be reviewed regarding whether the FAP benefit amount is correct, is whether the Department correctly determined the groups' unearned income. Petitioner receives SSI and has a monthly deduction taken from his SSI by the Social Security Administration for repayment of SSI due to an overpayment. When calculating income the Department did not deduct the repayment amount from the total SSI received and used the total SSI amount of \$ [REDACTED] BEM 500 provides:

***Reduced Benefits Due to Overpayment***

Amounts deducted by an issuing agency to recover a previous overpayment or ineligible payment **are not** part of gross income. These amounts are excluded as income.

***Exceptions:*** The following overpayment amounts **must** be included in gross income:

- Any portion of an overpayment (that is normally countable) if the original payment was excluded income when received. BEM 500 (October 1, 2016), p. 6

Based upon the evidence presented on this issue at the hearing, it is determined that the Department improperly included the repayment amount for repayment of SSI. The Petitioner said he was required to repay SSI overpaid to him by SSA because he was out of the United States on two occasions and was determined by SSA to have been overpaid SSI due to the length of time he was out of the country. He further stated he is paying back \$ [REDACTED] It also does not appear that the Department looked at this issue to determine if the original payments to Petitioner were excluded income when he received it. At the time he would have received the SSI that he is now repaying, there is no

evidence that the SSI was an excluded income payment; therefore, the Department should not have included the repayment amount in determining gross unearned income. BEM 500.

It is, therefore, determined that the Department did not correctly calculate the Petitioner FAP benefits as the unearned income amount was incorrect and should have not included the amount he is repaying.

### **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 found that Petitioner's daughter, [REDACTED] was an ineligible student.

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 included the repayment amount paid by Petitioner regarding his SSI overpayment.

Accordingly, the Department's decision is

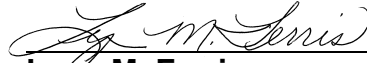
1. **AFFIRMED IN PART** with respect to the determination that Petitioner's group member who attends college full-time (his daughter) is an ineligible student; and,
2. **REVERSED IN PART** with respect to using the full gross amount of SSI as unearned income without removing the repayment amount being deducted by SSA.

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. The Department shall recalculate the Petitioner's FAP benefits for [REDACTED] and redetermine the Petitioner's unearned income and exclude amounts deducted by SSA to repay SSI overpayment.
2. The Department shall issue an FAP supplement to the Petitioner for FAP benefits Petitioner is otherwise entitled to receive in accordance with Department policy.

3. The Department shall provide the Petitioner written notice of its determination.

LMF/jaf



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**Lynn M. Ferris**  
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]