



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: March 23, 2017  
MAHS Docket No.: 17-001699  
Agency No.: ██████████  
Petitioner: ██████████

**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 three-way telephone hearing was held on March 2, 2017, and March 22, 2017, from Detroit, Michigan. The Petitioner appeared and testified. The Department of Health and Human Services (Department) was represented by ██████████, Hearings Facilitator. Also, Program Manager ██████████ was present for the hearing date of March 2, 2017 and he did not provide any testimony.

**ISSUE**

Did the Department properly calculate Petitioner's Food Assistance Program (FAP) allotment effective December 19, 2016, ongoing?

**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 December 19, 2016, Petitioner applied for FAP benefits.
2. On December 27, 2016, the Department sent Petitioner a Notice of Case Action notifying him that he was approved for ██████ dollars in FAP benefits for the period of December 19, 2016 to December 31, 2016. Exhibit B, pp. 1-4.
3. The Notice of Case Action also informed Petitioner that he was approved for ██████ in FAP benefits for the benefit month of January 2017. Exhibit B, pp. 1-4.

4. On January 24, 2017, the Department sent Petitioner a Notice of Case Acton notifying him that he was approved for █████ in FAP benefits effective February 1, 2017 to November 30, 2017. Exhibit A, pp. 2-5.
5. On February 9, 2017, Petitioner filed a hearing request, protesting his FAP benefits. Exhibit A, pp. 14-15.

### **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.

#### **Procedural history**

On February 17, 2017, the Michigan Administrative Hearing System (MAHS) issued a Notice of Hearing notifying Petitioner of the hearing scheduled for March 2, 2017.

On March 1, 2017, MAHS issued a Notice of Hearing notifying Petitioner that he will participate in the hearing by telephone scheduled for March 2, 2017.

On March 2, 2017, Petitioner and the Department participated in the hearing; however, the hearing was not completed during the scheduled time and the undersigned Administrative Law Judge (ALJ) determined that the hearing should be continued.

On March 3, 2017, the undersigned ALJ issued an Order of Continuance and Interim Order Requesting Additional Documentation.

On March 3, 2017, MAHS issued a Notice of Hearing notifying Petitioner that he will participate in the hearing by telephone scheduled for March 22, 2017.

On March 22, 2017, Petitioner and the Department participated in the continued hearing and the record was closed at the conclusion of the hearing.

### **Preliminary matters**

First, Petitioner testified that he is disputing his FAP benefits dating back to two-years-ago. However, the undersigned ALJ lacks the jurisdiction to address Petitioner's FAP benefits from this time period. See BAM 600 (October 2016), pp. 1-6. Nevertheless, the undersigned ALJ has the jurisdiction to address Petitioner's FAP benefits from December 19, 2016, ongoing. On December 27, 2016, the Department sent Petitioner a Notice of Case Action notifying him that his FAP benefits were approved effective December 19, 2016. Exhibit B, pp. 1-4. Petitioner's hearing request was filed within 90 calendar days from the date of this Notice of Case Action. Exhibit A, pp. 14-15. As such, the undersigned ALJ has the jurisdiction to address Petitioner's FAP benefits for December 2016. See BAM 600, p. 6. Moreover, because Petitioner's hearing request was received in February 2017, the undersigned ALJ will also address Petitioner's FAP benefits for January 2017 and February 2017. See BAM 600, pp. 5-6 (for FAP only, MAHS may grant a hearing concerning the current level of benefits or denial of expedited service).

Second, Petitioner also testified that he disputed his Medical Assistance (MA) benefits. However, the undersigned ALJ lacks the jurisdiction to address Petitioner's MA benefits because his hearing request does not dispute this program. Exhibit A, pp. 14-15. Petitioner can attempt to file another hearing request to dispute his MA benefits. See BAM 600, pp. 1-6.

### **FAP benefits for December 2016**

The undersigned ALJ will address the benefit month of December 2016 separately because Petitioner was not issued any FAP benefits for this month.

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

The Department calculated Petitioner's gross earned income to be [REDACTED]. Exhibit B, p. 5. The FAP budget indicated, though, that [REDACTED] of the gross income was not eligible for the [REDACTED] earned income deduction. Exhibit B, p. 5. Furthermore, the Department obtained his gross income using his home help provider wages. Exhibit A, p. 10. Policy states that the Department enters income as wages for an individual who provides Independent Living Services (ILS) (also known as adult home help) as earned income. BEM 501 (July 2016), p. 8. This income is not counted for the individual receiving the service. BEM 501, p. 8. Specifically, the Department testified it used his gross payments of [REDACTED] on December 8, 2016 and [REDACTED] for December 15, 2016, to calculate his gross income. Exhibit A, p. 10. However, using the above amounts, the undersigned ALJ was unable to see how the Department calculated the gross earned income of [REDACTED]

In response, Petitioner argued that the Department miscalculated his gross income and instead, his gross income should be approximately [REDACTED]. He testified that the income of [REDACTED] on December 8, 2016, was a lump sum payment representing two months of wages and that is not his usual income. He testified that his monthly gross income is approximately [REDACTED] and his net monthly income is approximately [REDACTED] and/or [REDACTED].

A group's financial eligibility and monthly benefit amount are determined using: actual income (income that was already received) or prospected income amounts (not received but expected). BEM 505 (July 2016), p. 1. Only countable income is included in the determination. BEM 505, p. 1. Each source of income is converted to a standard monthly amount, unless a full month's income will not be received. BEM 505, p. 1. The Department converts stable and fluctuating income that is received more often than monthly to a standard monthly amount. BEM 505, p. 9. The Department uses one of the following methods: (i) multiply weekly income by 4.3; (ii) multiply amounts received every two weeks by 2.15; or (iii) add amounts received twice a month. BEM 505, p. 9.

Moreover, the Department determines budgetable income using countable, available income for the benefit month being processed. BEM 505, p. 3. The Department uses actual gross income amounts received for past month benefits, converting to a standard monthly amount, when appropriate. BEM 505, p. 3. Except, the Department can use prospective income for past month determinations. BEM 505, p. 3. In prospecting income, the Department is required to use income from the past thirty days if it appears to accurately reflect what is expected to be received in the benefit month, discarding any pay if it is unusual and does not reflect the normal, expected pay amounts. BEM 505, p. 6.

Based on the foregoing information and evidence, the undersigned ALJ finds that the Department failed to satisfy its burden of showing that it properly calculated Petitioner's gross earned income. As stated above, the undersigned ALJ was unable to see how the Department calculated the gross earned income of [REDACTED]. Furthermore, the Department failed to provide sufficient evidence and testimony showing why [REDACTED] of the gross income was excluded from the 20% earned income deduction. See BEM 550 (October 2015), p. 1. Therefore, the Department is ordered to recalculate Petitioner's gross earned income for December 2016 in accordance with Department policy. See BEM 505, pp. 1-16.

Next, the Department properly applied the [REDACTED] standard deduction applicable to Petitioner's group size of one. Exhibit B, p. 5 and RFT 255 (October 2016), p. 1. Petitioner also did not have and/or qualify for any dependent care or medical expense deductions. Exhibit B, p. 5.

The Department also did not provide Petitioner with any child support deductions. However, Petitioner argued that he is responsible for child support expenses. For groups with no senior/disabled/disabled veteran (SDV) member, the Department uses court ordered child support and arrearages paid to nonhousehold members. BEM 554 (June 2016 and January 2017), p. 1. The Department uses the average of child support

payments received in the past three calendar months, unless changes are expected. BEM 505, p. 5. In this case, the Department presented evidence, a Consolidated Income Inquiry, showing that he is not responsible for any child support payments. Exhibit A, p. 9. The Department also reviewed Petitioner's application dated December 19, 2016 and his interview conducted on December 27, 2016 and testified there was no indication that Petitioner reported any child support expenses.

In response, Petitioner argued that he responsible for child support payments and income was withheld from his tax refund to pay for his child support payments. However, Petitioner failed to provide any documentation showing that he is obligated to pay child support expenses.

Based on the above information, the undersigned ALJ finds that the Department properly did not budget any child support deductions for Petitioner in accordance with Department policy. The Department presented credible evidence showing that its system shows Petitioner is not responsible for such expenses. Moreover, Petitioner failed to present any evidence showing that he is responsible to pay for child support expenses.

Also, the Department presented the FAP – Excess Shelter Deduction budget (shelter budget) for December 2016, which indicated that Petitioner's monthly housing expense is [REDACTED]. Exhibit B, p. 7. Moreover, the Department also provided Petitioner with the [REDACTED] mandatory heat and utility (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 B, p. 7; BEM 554, pp. 14-16; and RFT 255, p. 1. The shelter budget ultimately concluded that Petitioner was eligible for the maximum shelter amount allowed for non-SDV members, which was [REDACTED]. Exhibit B, p. 7. For groups with no SDV member, the Department uses the excess shelter up to the maximum in RFT 255, which is [REDACTED] BEM 554, p. 1 and RFT 255, p. 1. Petitioner disputed the calculation of his housing expenses. However, his argument is moot because the Department is providing him with the maximum excess shelter amount allowed for non-SDV members. As such, the Department properly provided Petitioner with an excess shelter deduction of [REDACTED].

In summary, because the Department failed to satisfy its burden of showing that it properly calculated Petitioner's gross earned income, the Department is ordered to recalculate Petitioner's FAP allotment effective December 19, 2016 to December 31, 2016.

#### **FAP benefits for January 2017 and February 2017**

The undersigned ALJ will address the benefit months of January 2017 and February 2017 jointly because both benefit months had the same calculations.

Again, it was not disputed that the certified group size is one and that Petitioner is not a SDV member. The Department presented the January 2017 and February 2017 FAP budgets for review. Exhibit B, pp. 8-13.

The Department calculated Petitioner's gross earned income to be [REDACTED] which he disputed. Exhibit B, pp. 8 and 11. The Department obtained his gross income using his home help provider wages. Exhibit A, p. 10. The calculation of Petitioner's gross income was based on the following two pay stubs: (i) pay date of January 12, 2017, with a gross pay of [REDACTED]; and (ii) pay date of January 12, 2017, with a gross pay of [REDACTED]. Exhibit A, p. 10. Converting the above earnings to a standard monthly amount, results in a total income of [REDACTED] Exhibit B, pp. 8 and 11

In response, Petitioner again argued that income used was incorrect. Petitioner reiterated the same testimony in the prior analysis for the benefit month of December 2016.

Based on the foregoing information and evidence, the undersigned ALJ finds that the Department properly calculated Petitioner's gross earned income in accordance with Department policy. See BEM 505, p. 9. Per BEM 505, the Department converts stable and fluctuating income that is received more often than monthly to a standard monthly amount. BEM 505, p. 9. One of those methods to calculate a standard monthly amount includes adding amounts received twice a month. BEM 505, p. 9. This is exactly what the Department did in this instance when it added Petitioner's gross earnings received on January 12, 2017, resulting in a monthly gross income of [REDACTED] Exhibit A, p. 10 and Exhibit B, pp. 8 and 11. As such, the undersigned ALJ finds that the Department properly calculated Petitioner's gross earned income of [REDACTED] in accordance with Department policy. See BEM 505, pp. 1-9.

The Department will then apply a 20 percent earned income deduction for his wages. BEM 550 (January 2017), p. 1. Twenty percent of [REDACTED] is [REDACTED] (rounded-up), which results in a post earned income of [REDACTED] See Exhibit B, pp. 8 and 11.

Next, the Department properly applied the [REDACTED] standard deduction applicable to Petitioner's group size of one. RFT 255, p. 1. Moreover, as shown in the previous analysis, the undersigned ALJ concluded that the Department properly did not budget any child support deductions for Petitioner in accordance with Department policy. Exhibit B, pp. 8 and 11. Thus, once the Department subtracts the [REDACTED] standard deduction, this results in an adjusted gross income of [REDACTED]. See Exhibit B, pp. 8-9 and 11-12.

Also, the Department presented the FAP – Excess Shelter Deduction budgets for January 2017 and February 2017 (shelter budgets), which indicated that Petitioner's monthly housing expense is [REDACTED] and was based on his rental obligation, property taxes, and homeowners insurance. Exhibit B, pp. 10 and 13. Moreover, the Department also provided Petitioner with the [REDACTED] mandatory heat and utility (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 B, pp. 10 and 13; BEM 554, pp. 14-16; and RFT 255, p. 1. The shelter budgets ultimately concluded that Petitioner was eligible for the maximum shelter amount allowed for non-SDV members, which was [REDACTED] Exhibit B, pp. 10 and 13. For groups with no SDV member, the Department uses the excess shelter up to the maximum in RFT 255, which is [REDACTED] BEM 554, p. 1 and RFT 255, p. 1. As stated in the previous analysis, Petitioner disputed the calculation of his housing expenses. However, his argument is moot because the Department is providing him with the maximum excess shelter amount allowed for non-SDV members. As such, the Department properly provided Petitioner with an excess shelter deduction of [REDACTED] Exhibit B, pp. 10 and 13.

The Department then subtracts the [REDACTED] adjusted gross income from the [REDACTED] excess shelter deduction, which results in a net income of [REDACTED] Exhibit B, pp. 9 and 12. 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 January 1, 2017. RFT 260 (October 2016), p. 9.

### **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 (i) the Department failed to satisfy its burden of showing that it properly calculated Petitioner's FAP allotment for December 19, 2016 to December 31, 2016; (ii) the Department properly calculated Petitioner's FAP allotment effective January 1, 2017, ongoing; and (iii) the undersigned ALJ lacks the jurisdiction to address Petitioner's MA benefits and his FAP benefits dated prior to December 19, 2016.

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to Petitioner's FAP benefits effective January 1, 2017, ongoing, and **REVERSED IN PART** with respect to his FAP benefits from December 19, 2016 to December 31, 2016.

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 for December 19, 2016 to December 31, 2016;
2. Issue supplements to Petitioner for any FAP benefits he was eligible to receive but did not from December 19, 2016 to December 31, 2016; and
3. Notify Petitioner of its decision.

**IT IS ALSO ORDERED** that Petitioner's dispute with his MA benefits and his FAP benefits dated prior to December 19, 2016 is **DISMISSED** for lack of jurisdiction.

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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]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

CC: [REDACTED]  
[REDACTED]