



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: May 22, 2017
MAHS Docket No.: 17-003630
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Gary Heisler

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 May 18, 2017, from Lansing, Michigan. Petitioner appeared and testified. Petitioner was represented by attorney [REDACTED] of [REDACTED]. Department employees Family Independence Manager [REDACTED] and Eligibility Specialist [REDACTED] appeared and testified on behalf of the Department. Assistant Attorneys General [REDACTED] and [REDACTED] represented the Department.

ISSUE

Did the Department determine the proper amount of Petitioner's Food Assistance Program (FAP) eligibility for the period March 1, 2017 and 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. Petitioner was an ongoing recipient of Food Assistance Program (FAP) benefits. Petitioner was receiving \$ [REDACTED] per month of Food Assistance Program (FAP) benefits. Petitioner's Food Assistance Program (FAP) financial eligibility budget (Department Exhibit F) contained monthly unearned income of \$ [REDACTED]. That is the sum of Petitioner's \$ [REDACTED] of monthly Supplemental Security Income (SSI) benefits plus the \$ [REDACTED] per month Michigan State Supplement. The Food Assistance Program (FAP) financial eligibility budget did not contain a rental expense.

February 28, 2017 was the last day of Petitioner's Food Assistance Program (FAP) eligibility certification period.

2. On January 4, 2017, Petitioner was sent a Redetermination (DHS-1010) for his Food Assistance Program (FAP) eligibility. The Redetermination (DHS-1010) and proofs were due back by February 2, 2017.
3. On January 18, 2017, Petitioner returned the Redetermination (DHS-1010) form. (Department Exhibit A)
4. On February 2, 2017, Petitioner participated in the scheduled telephone hearing. Petitioner reported he had a \$ [REDACTED] per month rental expense. (Department Exhibit B)
5. On February 2, 2017, Petitioner was sent a Verification Checklist (DHS-3503). (Department Exhibit C) The checklist requested verification of Petitioner's home rent. The form specifically listed requested proofs as: Rent receipt showing amount, address, landlord, renter; Landlord statement; Current lease; or DHS-3688, Shelter Verification Form.
6. On February 14, 2017, Petitioner submitted documentation which the Department did not accept as sufficient verification of his rental expense. (Department Exhibit E) The submission consists of: a US Postal Service money order receipt dated December 1, 2016 for \$ [REDACTED] with "Rent [REDACTED]" handwritten on it; a US Postal Service money order receipt dated January 3, 2017 for \$ [REDACTED] with "[REDACTED]" handwritten on it; and a Consumers Energy bill for service address [REDACTED] which was mailed to Petitioner at a different address and stated his January 27, 2017 payment had been received.
7. The Department updated Petitioner's Food Assistance Program (FAP) financial eligibility budget to determine Petitioner's eligibility from March 1, 2017 ongoing. (Department Exhibit G) The financial eligibility budget contained monthly unearned income of \$ [REDACTED]. That is the sum of Petitioner's \$ [REDACTED] monthly Supplemental Security Income (SSI) benefits, his \$ [REDACTED] per month Michigan State Supplement and \$ [REDACTED] of monthly Retirement, Survivor, Disability Income (RSDI) benefits. The Food Assistance Program (FAP) financial eligibility budget did not contain a rental expense. Petitioner's Food Assistance Program (FAP) eligibility was determined to be \$ [REDACTED] per month.
8. On March 16, 2017 Petitioner submitted a hearing request regarding the amount of his Food Assistance Program (FAP).
9. On April 7, 2017, a Benefit Notice (DHS-176) was sent to Petitioner stating his Food Assistance Program (FAP) benefits would be \$ [REDACTED] per month from March 1, 2017 – March 1, 2018. (Department Exhibit H)

10. On April 13, 2017, Petitioner submitted additional US Postal Service money order receipts and a signed statement from [REDACTED]. The statement from [REDACTED] says she resides at [REDACTED] and that Petitioner is her neighbor and resides at [REDACTED].
11. On April 26, 2017, Petitioner submitted another hearing request regarding the amount of his Food Assistance Program (FAP) benefits.

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.

NOTICE

Petitioner raises the issue that he was not provided notice before his Food Assistance Program (FAP) benefits for March 2017 were reduced. Petitioner asserts that he should receive his previous FAP benefit amount since he was not given notice of the reduction before it occurred. The Department does not dispute that a Notice of Case Action (DHS-1605) was not issued by BRIDGES when Petitioner's Food Assistance Program (FAP) eligibility was re-determined.

Bridges Administration Manual (BAM) 220 Case Actions (1-1-2017) was in effect at the time and provides in relevant part:

NOTICE OF CASE ACTIONS

All Programs

Upon certification of eligibility results, Bridges automatically notifies the client in writing of positive and negative actions by generating the appropriate notice of case action. The notice of case action is printed and mailed centrally from the consolidated print center.

There are two types of written notice: **adequate** and **timely**.

Adequate Notice

An adequate notice is a written notice sent to the client at the same time an action takes effect (not pended). Adequate notice is given in the following circumstances:

Timely Notice

All Programs

Timely notice is given for a **negative action** unless policy specifies adequate notice or no notice. See Adequate Notice and, for CDC and FAP only, Actions Not Requiring Notice, in this item. A timely notice is mailed at least 11 days before the intended negative action takes effect. The action is pended to provide the client a chance to react to the proposed action.

PROCESSING CHANGES

All Programs

Enter all changes in Bridges by changing the affected data elements. Certify the eligibility results in Bridges for all appropriate benefits and benefit periods.

Negative Actions

A **negative action** is identified in Bridges with notice reason(s) in eligibility results. Negative actions include:

Decrease in program benefits, including case or EDG closure.

FAP Only

Reducing a FAP group's benefits at redetermination is treated as a **positive action** because the change affects the new certification, **not** the current benefit period.

Policy provides that the reduction of Petitioner's FAP at redetermination is treated as a positive action. That removes the requirement of providing timely notice. While more of BAM 220 has not been included here, nothing was found which indicates anything less than adequate notice was required. However, the determination that Petitioner's situation is not a negative action leads to the next part of the case analysis, jurisdiction.

JURISDICTION

Bridges Administration Manual (BAM) 600 Hearings (10-1-2016) was in effect at the time and provides in relevant part:

Granting a Hearing

All Programs

MAHS may grant a hearing about any of the following:

Denial of an application and/or supplemental payments.
Reduction in the amount of program benefits or service.
Suspension or termination of program benefits or service.
Restrictions under which benefits or services are provided.
Delay of any action beyond standards of promptness.
For **FAP only**, the current level of benefits or denial of expedited service.

The first four of these categories are tied to the issuance of a written notice of case action and BAM 600 goes on to require that a request for hearing be made within 90 calendar days of the written notice of case action. The last two of the categories are not tied to a notice of case action. None of the categories provides jurisdiction to conduct a hearing on the question of whether or not a notice was issued. The purpose behind Administrative Law Hearings is to determine if the Department's eligibility determination, for an applicant or recipient, was made in accordance with the Department's policies. There may be "paperwork" that is an important factor in determining how much assistance someone is eligible for, however, the hearing is still about the amount of assistance, not the "paperwork".

Both of Petitioner's hearing requests provide jurisdiction to conduct a hearing on the current level of his Food Assistance Program (FAP) benefits. Even though the evidence shows that the Department did not send Petitioner adequate notice of his Food Assistance Program (FAP) eligibility determination, the lack of notice did not impact the amount of Food Assistance Program (FAP) benefits Petitioner was determined to be eligible for.

Claimant's request to receive his previous level of benefits because he did not get timely notice of the change, is not within the scope of authority delegated to this Administrative Law Judge pursuant to a written directive signed by the Department of Human Services Director, which states:

Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations or overrule or make exceptions to the department policy set out in the program manuals.

Furthermore, administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940); *Auto-Owners Ins Co v Elchuk*, 103 Mich App 542, 303 NW2d 35 (1981); *Delke v Scheuren*, 185 Mich App 326, 460 NW2d 324 (1990), and *Turner v Ford Motor Company*, unpublished opinion per curium of the Court of Appeals issued March 20, 2001 (Docket No. 223082).

Food Assistance Program (FAP) eligibility determination

Petitioner does not dispute the amount of income used in the eligibility determination. The only issue Petitioner raises is that his reported rental expense is not used in the eligibility determination. The Department asserts that the documentation Petitioner

submitted on February 14, 2017, does not constitute sufficient verification of rental expense in accordance with Bridges Eligibility Manual (BEM) 554 FAP Allowable Expenses and Expense Budgeting (1-1-2017). Petitioner asserts that the totality of the documentation submitted does meet the requirements of BEM 554. BEM 554 provides in relevant part:

SHELTER EXPENSES

Allow a shelter expense when the FAP group has a shelter expense or contributes to the shelter expense. Do **not** prorate the shelter expense even if the expense is shared. Shelter expenses are allowed when billed. The expenses do **not** have to be paid to be allowed.

Housing Expenses

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.

Property Taxes, Assessments and Insurance

Property taxes, state and local assessments and insurance on the structure are allowable expenses. Do **not** allow insurance costs for the contents of the structure, for example, furniture, clothing and personal belongings.

Deduct the entire insurance charge for structure and contents when the amount for the structure cannot be determined separately.

Renter's insurance is **not** allowed.

Home Repair Expenses

Allow charges for repair of a home which was substantially damaged or destroyed due to a natural disaster such as fire or flood.

Verification

Verify shelter expenses at application and when a change is reported. If the client fails to verify a reported change in shelter, remove the old expense until the new expense is verified.

Verify the expense **and** the amount for housing expenses, property taxes, assessments, insurance and home repairs.

Verification Sources

Acceptable verification sources include, but are **not** limited to:

Mortgage, rental or condo maintenance fees contracts or a statement from the landlord, bank or mortgage company.

Copy of tax, insurance, assessment bills or a collateral contact with the appropriate government or insurance office.

Cancelled checks, receipts or money order copies, if current. The receipt must contain minimum information to identify the expense, the amount of the expense, the expense address if verifying shelter, the provider of the service and the name of the person paying the expense.

DHS-3688, Shelter Verification form. A copy of this form will be sent to the FAP group and a task and reminder sent to the specialist when a change of address is done in Bridges. The due date will be on the form. The specialist must monitor for return of the form and take appropriate action if it is or is **not** returned.

Current lease.

This verification sources listed above address three separate types of shelter expense and the different specific expenses contained in the three separate categories. The plain language in the first, listed, verification source specifies that it is for mortgage, rental or condo maintenance fees. The plain language in the second listed source is obviously applicable to property taxes, assessments and insurance. The plain language in the third listed source addresses expenses and correlates to the third listed expense category of home repair expenses. The generic term "provider of the service" is used to identify who payments were made to. If the third listed verification source is applied to a rent expense, the "provider of the service" would be the landlord/owner of the property being rented. The DHS-3688, Shelter Verification is to be signed by the landlord/owner of the property. A current lease would be signed by both the tenant and landlord of the rental property.

Petitioner was also sent a Verification Checklist (DHS-3503) requesting verification of his home rent. The form specifically listed requested proofs as:

Rent receipt showing amount, address, landlord, renter

Landlord statement

Current lease

DHS-3688, Shelter Verification Form.

The more specific language used for rent expense on the Verification Checklist (DHS-3503) specifies a receipt showing the landlord, a statement from the landlord, a current lease which would be signed by the landlord, or a Shelter Verification Form which would be filled out and signed by the landlord.

Every verification source in the Department's policy and documents, requires identification of the payee for allowed FAP shelter expenses. During this hearing Petitioner testified that he will not disclose the identity of his landlord. Petitioner bases that position on his concern that the landlord will be contacted by the Department and Petitioner believes that if the landlord knows he is receiving Food Assistance he will not be allowed to rent the location he currently resides at.

The US Postal Service money order receipts with a street address and "Rent" written on them are insufficient verification of a rent expense because they do not identify the landlord/owner of the property. Including a utility bill statement for the rental property address proves Petitioner is responsible for the utilities at the address. However, the money order receipts combined with the utility bill statement are still insufficient verification of a rent expense because they do not identify the landlord/owner of the property.

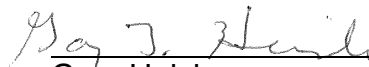
The additional US Postal Service money order receipts submitted on April 13, 2017, are irrelevant and were not admitted into evidence. They are not current to the eligibility determination at issue. The statement from [REDACTED] submitted on April 13, 2017, is irrelevant and was not admitted into evidence. The issue in this hearing is not whether Petitioner resides on Fairmount. The issue in this hearing is whether Petitioner has provided sufficient verification of a rental expense for the residence on Fairmount, so it can be included in his Food Assistance Program (FAP) eligibility determination. The statement from [REDACTED] does not address whether Petitioner rents the residence, nor does it identify the landlord/owner of the residence on Fairmount.

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 determined the proper amount of Petitioner's Food Assistance Program (FAP) eligibility for the period March 1, 2017 and ongoing.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.

GH/nr



Gary Heisler
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]

Counsel for Respondent

[REDACTED]

Counsel for Respondent

[REDACTED]

Counsel for Petitioner

[REDACTED]

Petitioner

[REDACTED]