



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]

Date Mailed: May 11, 2017  
MAHS Docket No.: 17-004712  
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] [REDACTED] from Detroit, Michigan. The Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by [REDACTED] [REDACTED] Eligibility Specialist, and [REDACTED], Family Independence Specialist.

### **ISSUE**

Did the Department properly calculate 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. The Petitioner applied for FAP and State Emergency Relief (SER) benefits on [REDACTED]. (Exhibit 2)
2. On [REDACTED] [REDACTED], the Department sent a Verification Checklist (VCL) requesting verification of income.
3. The Department received the Petitioner's paycheck stubs on [REDACTED]. (Exhibit 7)

4. On [REDACTED], the Department issued a Notice of Case Action advising the Petitioner that she was eligible for FAP benefits of \$ [REDACTED] for [REDACTED] and \$ [REDACTED] for [REDACTED]. (Exhibit 4)
5. The Department sought verification of rent from the Petitioner.
6. The Petitioner provided the documentation for rent on [REDACTED].
7. The Petitioner requested a timely hearing on [REDACTED], protesting the Department's actions.

### **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, in this case, processed the Petitioner's FAP application which was filed on [REDACTED]. Thereafter, the Department requested verification of income by Petitioner, which it received on [REDACTED]. The paycheck stubs were timely received. (Exhibits 3 and 7) A Notice of Case Action was sent to Petitioner on [REDACTED], approving the Petitioner for \$ [REDACTED] FAP for [REDACTED] and \$ [REDACTED] for [REDACTED]. (Exhibit 4)

A review of the FAP budget was made at the hearing, and the following was confirmed. The Petitioner has a group size of two members. The Department determined earned income for Petitioner to be \$ [REDACTED] monthly and included unearned income from child support of \$ [REDACTED]. The Department conceded at the hearing that it used the incorrect months when determining child support income. The Department included housing expenses of \$ [REDACTED] monthly and credited a \$ [REDACTED] heat and utility (h/u) allowance. The Department conceded at the hearing that the \$ [REDACTED] rent figure was from an old budget and was not verified. The Department also withheld \$ [REDACTED] due to a past overissuance. (Exhibit 4)

Department policy regarding child support found in BEM 505 requires the Department use the average child support payments received in the past three calendar months unless changes are expected. BEM 505 (January 1, 2017), p. 4. When recalculating

the FAP benefits for January, the Department must use the three months prior to [REDACTED].

The Petitioner provided the Department a note from her father, [REDACTED], verifying that the Petitioner is responsible for all bills associated with the address, [REDACTED]. (Exhibit 5) Attached to the note was a lease with a begin date of [REDACTED], indicating that the rent was \$ [REDACTED] monthly and a cashier's check in the amount of \$ [REDACTED] to [REDACTED], paid by [REDACTED]. The lease is not signed nor is [REDACTED]' name on the lease. The note from [REDACTED]' father indicates that she pays all expenses. The information was received on [REDACTED], after the Department calculated [REDACTED] benefits. The Department used this rent when recalculating benefits for [REDACTED], which was correct.

At the hearing, it was clear that no rent expense should have been included in the FAP budget for [REDACTED] as the Department used old data in the Bridges System for Petitioner. Clearly, the use of old inapplicable rent was incorrect.

The Department's calculation of Petitioner's income also appears incorrect. The earned income calculation was based on paystubs provided by Petitioner pursuant to the verification. (Exhibit 7) The paystubs provided were \$ [REDACTED] [REDACTED]); \$ [REDACTED] [REDACTED]); and [REDACTED]. The Petitioner is paid weekly. The pays total \$ [REDACTED] with average weekly pay of \$ [REDACTED] ( $\$ [REDACTED] \div 4 = \$ [REDACTED]$  (Exhibit 7). This weekly amount must be multiplied by 4.3 (converted) to account for months with five pay periods. See BEM 505, pp. 8-9. The gross monthly earned income using the paystubs provided by Petitioner is \$ [REDACTED]. The Department used income of \$ [REDACTED] and could not explain the discrepancy.

Because the Petitioner's pays fluctuate weekly, when recalculating the FAP benefits and determining earned income, the Department should also determine if the Petitioner's overtime is ongoing so as to determine as closely as possible the standard monthly amount as required by BEM 505, p. 3. The Department is required to use income for the last 30 days if it appears to accurately reflect what is expected. The Department is required to discard a pay from the past 30 days if it is unusual and does not reflect the normal expected pay amounts. BE 505, p. 6. Thus, the Department must determine, based upon a discussion with Petitioner, if the 30 days of paystubs she provided when applying for FAP in [REDACTED] were unusual or normal for beginning her employment.

Based upon the errors contained in the [REDACTED] FAP budget, it is determined that the Department must recalculate the [REDACTED] benefits to remove the incorrect rent and redetermine the correct earned income from employment and unearned income from child support. Thereafter, for [REDACTED] ongoing and [REDACTED], the Department must adjust FAP earned income accordingly based upon its determination for [REDACTED] earned income. The Department correctly included the rent beginning

██████████ based upon Petitioner's Rent Verification Report date of ██████████, when processing the information.

**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 calculated the Petitioner's FAP benefits.

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. The Department shall recalculate (reprocess) the FAP benefits for ██████████ ongoing in accordance with Department policy.
2. The Department shall issue the Petitioner FAP supplements for FAP benefits if any the Petitioner was otherwise entitled to receive in accordance with Department policy.

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

**Petitioner**

[REDACTED]  
[REDACTED]  
[REDACTED]

**DHHS**

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