



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: July 7, 2017
MAHS Docket No.: 17-007386
Agency No.: [REDACTED]
Petitioner: [REDACTED]

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; 42 CFR 438.400 to 438.424; 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. Petitioner was present for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearings Facilitator.

ISSUE

Did the Department properly calculate Petitioner’s Food Assistance Program (FAP) allotment for \$51 for the period of [REDACTED] ?

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 is an ongoing recipient of FAP benefits.
2. Petitioner’s FAP benefits decreased from \$ [REDACTED] for [REDACTED] to \$ [REDACTED] for [REDACTED].
3. Petitioner’s FAP group composition is three, which includes herself and her two foster children/grandchildren (Child A and Child B).
4. Petitioner receives monthly Supplemental Security Income (SSI) in the amount of \$ [REDACTED] she receives child foster care payments in the amount of \$ [REDACTED] for each

child; and Child A (date of birth: [REDACTED]) receives \$ [REDACTED] in Social Security benefits.

5. Child B (date of birth: [REDACTED]) is also entitled to receive \$ [REDACTED] in SSI benefits; however, has not been receiving the funds because they are being paid to a third party/representative payee "Health Veteran and Community Wellness." The funds are currently not available to Child B. [Exhibit A, p. 1.]
6. On [REDACTED], the Department sent Petitioner a Notice of Case Action notifying her that her FAP benefits decreased to \$ [REDACTED] effective [REDACTED].
7. On [REDACTED], Petitioner filed a verbal hearing request, protesting the Department's action. [Exhibit A, p. 11.]

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.

Preliminary matter

In this case, Petitioner did not dispute the amount of her FAP benefits prior to [REDACTED]. Petitioner disputed, though, her FAP benefits for [REDACTED] ongoing. On [REDACTED], the Department sent Petitioner a Notice of Case Action notifying her that her FAP benefits increased to \$ [REDACTED] effective [REDACTED]. [Exhibit A, pp. 2-5.] However, the undersigned lacks the jurisdiction to address her FAP benefits effective [REDACTED], because this Notice of Case Action occurred *after* Petitioner's hearing request. Petitioner was informed that she can request another hearing to dispute her FAP benefits effective [REDACTED]. See BAM 600 (April 2017), p. 6, (The client or Authorized Hearing Representative (AHR) has 90 calendar days from the date of the written notice of case action to request a hearing. The request must be received in the local office within the 90 days). Nonetheless, the undersigned will address Petitioner's FAP benefits for [REDACTED] below:

FAP budget for June 2017

In the present case, the undersigned reviewed the FAP budget from ██████████ in the present matter. [Exhibit B, pp. 1-2.]

First, it was not disputed that the certified group size is three and that Petitioner and Child B were senior/disabled/disabled veteran (SDV) members.

Second, the Department calculated Petitioner's gross countable unearned income to be \$████████ which was comprised of Petitioner's SSI income, Petitioner's child foster care payments she receives for both children, Child A's Social Security benefits, and Child B's SSI benefits. Both parties did not dispute that Petitioner's SSI income, Petitioner's child foster care payments she receives for both children, and Child A's Social Security benefits should be budgeted. However, both parties agreed that Child B's SSI income should *not* be budgeted. Child B's SSI payments are being paid to "Health Veteran and Community Wellness," which is known as the representative payee of Child B's SSI payments. Petitioner testified that Child B has not received any of these benefits for some time. Petitioner cannot currently be the representative payee because she cannot receive foster care payments and SSI payments; hence why Child B has a different representative payee. Petitioner testified Child B's SSI benefits are being held by the representative payee until the issue is resolved in court. In sum, Petitioner argued that Child B's SSI payment should not be budgeted because the child has not receive any of this income. The Department agreed.

Income means a benefit or payment received by an individual which is measured in money. BEM 500 (January 2016), p. 3. It includes money an individual owns even if not paid directly such as income paid to a representative. BEM 500, p. 3. Income remaining after applying the policy in the income related items is called countable. BEM 500, p. 3. This is the amount used to determine eligibility and benefit levels. Count all income that is not specifically excluded. BEM 500, p. 3. Gross income is the amount of income before any deductions such as taxes or garnishments. BEM 500, p. 4. This may be more than the actual amount an individual receives. BEM 500, p. 4.

Income paid to an individual acting as a representative for another individual is not the representative's income. BEM 500, p. 7. The income is the other individual's income. BEM 500, p. 7. Common representatives include: legal guardians; court-appointed conservators; minor children's parents; or representative payees. BEM 500, pp. 7-8.

Based on the above policy, the Department would generally budget Child B's SSI income. Despite Child B having "Health Veteran and Community Wellness" as the representative payee, the income still belongs to Child B; thus, it would be budgeted. However, an issue arises in this case because both parties argue that the Child B has not been able to obtain this funds, making them unavailable.

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 (April 2017), p. 1. Only countable income is included in the determination. BEM 505, p. 1. Available income means income actually received or reasonably anticipated. BEM 505, p. 1. Reasonably anticipated means that the amount of income can be estimated and the date of receipt is known. BEM 505, p. 1. Available income includes garnisheed amounts and income received jointly. BEM 505, p. 1. The Department determines budgetable income using countable, available income for the benefit month being processed. BEM 505, p. 2.

Based on the above policy, the undersigned concludes that the Department did not act in accordance with Department policy when it budgeted Child B's SSI income. Both parties agreed that Child B at this point does not have access to the SSI income, which makes it unavailable. Policy states that the Department determines budgetable income using countable, available income for the benefit month being processed. BEM 505, p. 2. The evidence establishes that Child B's income is currently not available and, therefore, should be excluded from the budget. See BEM 505, pp. 1-2. Now, once the income does become available, the Department will have right to budget the income in accordance with Department policy. As such, the Department is ordered to exclude Child B's SSI benefits from the [REDACTED] budget.

Next, the Department properly applied the \$ [REDACTED] standard deduction applicable to Petitioner's group size of three. [Exhibit B, p. 1, and RFT 255 (October 2016), p. 1.] Petitioner also did not dispute that the Department did not budget any dependent care, medical deduction, or child support deductions. [Exhibit B, p. 1.]

Also, the Department presented the FAP – Excess Shelter Deduction budget (shelter budget), which indicated that Petitioner's monthly housing expense is \$ [REDACTED] which she did not dispute. [Exhibit B, p. 3.] 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. [Exhibit B, p. 3; BEM 554 (January 2017), pp. 14-16; and RFT 255, p. 1.]

In sum, because the Department did not properly calculate Petitioner's unearned income, the Department is ordered to recalculate Petitioner's FAP allotment for the period of [REDACTED], in accordance with Department policy.

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 improperly calculated Petitioner's FAP allotment in the amount of \$ [REDACTED] for the period of [REDACTED].

Accordingly, the Department's FAP 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. Begin recalculating the FAP budget for [REDACTED], in accordance with Department policy;
2. Exclude Child B's SSI benefits from the [REDACTED] budget;
3. Issue supplements to Petitioner for any FAP benefits she was eligible to receive but did not from [REDACTED]; and
4. Notify Petitioner of its decision.

EJF/jaf



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

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]

DHHS

[REDACTED]

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