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GOVERNOR

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

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Date Mailed: July 21, 2017
MAHS Docket No.: ██████████ 17-007708
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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 ██████████, from Detroit, Michigan. The Petitioner appeared for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by ██████████, Eligibility Specialist and ██████████, Family Independence Manager.

ISSUE

Did the Department properly calculate the amount of 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. Petitioner was an ongoing recipient of FAP benefits in the amount of ██████████ monthly. (Exhibit A, pp. 59-61)
2. On ██████████, the Department sent Petitioner a Notice of Case Action advising her that effective ██████████, her FAP benefits were being reduced to ██████████ monthly. (Exhibit A, pp. 25-27)

3. Petitioner's husband receives gross weekly income in the amount of [REDACTED] from his self-employment with [REDACTED] (Exhibit A, pp. 53-55; Exhibit 1)
4. National issued Petitioner's husband a Form-1099 indicating that his non-employee compensation for the tax year [REDACTED] was [REDACTED] (Exhibit 1)
5. Petitioner's [REDACTED] Tax Return Transcript indicates that Petitioner and her husband have [REDACTED] in wages and [REDACTED] in business income (Schedule C). It further indicates that Petitioner's husband is self-employed. (Exhibit A, pp. 47-52)
6. Petitioner has confirmed monthly housing costs consisting of [REDACTED] in rent. Petitioner is responsible for heat and utility expenses.
7. On [REDACTED] Petitioner requested a hearing disputing the Department's calculation of her FAP benefits, specifically, the Department's determination that her household had income of [REDACTED] Petitioner asserted that her household's earnings are [REDACTED] monthly. (Exhibit A, pp. 3-4)

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, Petitioner requested a hearing disputing the decrease in her FAP benefits to [REDACTED] effective [REDACTED]. The Department testified that in connection with a redetermination for Petitioner's Medical Assistance case, it updated the income information on Petitioner's FAP case and determined that Petitioner was eligible for [REDACTED] effective [REDACTED]. The Department presented a FAP EDG Net Income Results Budget which was reviewed to determine if the Department properly calculated the amount of Petitioner's FAP benefits. (Exhibit A, pp. 56-58).

All countable earned and unearned income available to the client must be considered in determining a client's eligibility for program benefits and group composition policies specify whose income is countable. BEM 500 (January 2016), pp. 1 – 5. At the hearing, the Department testified that it determined Petitioner's husband had income from two sources: self-employment (business income) of [REDACTED] annually; and earned income

from his employment with ██████ in the amount of ██████ weekly. Thus, the budget presented reflects self-employment income of ██████ and earned income of ██████

The amount of self-employment before any deductions is called total proceeds. Countable income from self-employment equals (i) the total proceeds of self-employment **minus** (ii) allowable expenses of producing the income, which is the higher of 25 percent of total proceeds or actual expenses if the client chooses to claim and verify the expenses. BEM 502 (July 2017), p. 3. The Department testified that it divided the business income of ██████ by 12 and determined that Petitioner's husband had gross monthly self-employment proceeds of ██████. The Department stated that it determined that Petitioner had allowable expenses of 25% of his total proceeds, resulting in countable income from self-employment in the amount of ██████. With respect to the earned income calculation, the Department testified that it multiplied the average of the ██████ weekly paystubs by 4.3 to determine that Petitioner's household also had earned income of ██████. See BEM 505 (April 2017), pp. 1-9.

Petitioner disputed that her husband had two income sources and argued that he only receives the ██████ weekly from ██████. Petitioner presented for review the Form-1099 which shows that her husband received non-employee compensation from ██████ in the yearly amount of ██████ for ██████ (Exhibit 1). A review of the Tax Return Transcript, the Form-1099, and the paystubs presented establishes that Petitioner's husband is self-employed as a contractor with ██████. See BEM 502. Therefore, the Department should not have counted the income received from ██████ as both earned income and self-employment income. As such, the Department did not establish that it properly calculated Petitioner's total income for FAP purposes.

The deductions to income on the net income budget were also reviewed. There was no evidence presented that Petitioner's group includes a senior/disabled/veteran (SDV) household member. BEM 550 (October 2015), pp. 1-2. Thus, the group is eligible for the following deductions to income:

- Dependent care expense.
- Excess shelter.
- Court ordered child support and arrearages paid to non-household members.
- Standard deduction based on group size.
- An earned income deduction equal to 20% of any earned income.

BEM 554 (January 2017), p. 1; BEM 556 (July 2013), p. 3.

In this case, because the total income was not properly calculated, it follows that the \$█████ earned income deduction calculated by the Department is also incorrect. There was no evidence presented that Petitioner had any out-of-pocket dependent care, or child support expenses. Therefore, the budget properly did not include any deduction for dependent care, or child support. Based on Petitioner's five person group size at the time the budget was completed, the Department properly applied the \$█████ standard deduction. RFT 255 (October 2016), p. 1. In calculating the excess shelter deduction of

█████ the Department properly considered housing expenses of █████ consisting of Petitioner's confirmed monthly rent and the █████ heat and utility standard based on Petitioner's responsibility for heat and utility expenses.

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 amount of Petitioner's FAP benefits for █████, ongoing, as the Department did not properly calculate Petitioner's income.

DECISION AND ORDER

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. Recalculate Petitioner's FAP budget for █████, ongoing;
2. Issue FAP supplements to Petitioner from █████, ongoing, for any FAP benefits she was eligible to receive but did not, in accordance with Department policy; and
3. Notify Petitioner in writing of its decision.

ZB/tlf



Zainab A. Baydoun
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

Via Email:

[REDACTED]

Petitioner – Via First-Class Mail:

[REDACTED]