



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: August 18, 2017  
MAHS Docket No.: 17-009062  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**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 [REDACTED], from Detroit, Michigan. The Petitioner appeared for the hearing and represented himself. The Department of Health and Human Services (Department) was represented by [REDACTED], Assistance Payment Worker.

### **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 is an ongoing recipient of FAP benefits. In connection with a redetermination, Petitioner's eligibility to receive FAP benefits was reviewed.
2. Since as early as [REDACTED] the Department has been withholding a portion of Petitioner's monthly FAP benefits to repay an overissuance through administrative recoupment. (Exhibit A, pp. 6-15)
3. On [REDACTED], the Department sent Petitioner a Notice of Case Action advising him that effective [REDACTED], although he was approved for \$ [REDACTED] he would be receiving \$ [REDACTED] due to a \$ [REDACTED] monthly administrative recoupment. (Exhibit A, pp. 3-4)

4. Petitioner confirmed that he receives gross monthly unearned income from Retirement, Survivors and Disability Insurance (RSDI) in the amount of \$[REDACTED]
5. Petitioner has confirmed monthly rent in the amount of \$[REDACTED] and is responsible for electric and telephone expenses.
6. On [REDACTED], Petitioner requested a hearing disputing the Department's actions regarding his 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.

In this case, Petitioner requested a hearing disputing the Department's actions with respect to his FAP case, specifically, the Department's calculation of his FAP benefits and the \$[REDACTED] monthly FAP benefit administrative recoupment which resulted in a \$[REDACTED] FAP benefit eligibility. 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.16-18).

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 (July 2017), pp. 1-5. The Department considers the gross amount of money earned from RSDI or Social Security in the calculation of unearned income for purposes of FAP budgeting. BEM 503 (July 2017), pp. 31-32. The Department concluded that Petitioner had gross unearned income from RSDI in the amount of \$[REDACTED] which Petitioner confirmed was correct. Thus, the unearned income was properly calculated.

The deductions to income on the net income budget were also reviewed. Petitioner's FAP group includes a senior/disabled/veteran (SDV) member. BEM 550 (January 2017), pp. 1-2. Groups with one or more SDV members are eligible for the following deductions to income:

- Dependent care expense.
- Excess shelter.
- Court ordered child support and arrearages paid to non-household members.
- Medical expenses for the SDV member(s) that exceed \$35.
- 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, Petitioner did not have earned income; thus, there was no applicable earned income deduction. There was no evidence presented that Petitioner had any out-of-pocket dependent care, medical expenses or child support expenses. Therefore, the budget properly did not include any deduction for dependent care, medical expenses or child support. The Department properly applied a \$█ standard deduction based on Petitioner's confirmed group size of one. With respect to the excess shelter deduction of \$█ the Department testified that it considered \$█ in confirmed monthly rent; the \$█ non-heat electric standard; and the \$█ telephone standard. The Department testified that Petitioner was not eligible for the \$█ heat-utility standard because he is not responsible for heating/gas expenses at his residence.

The heat/utility standard (h/u) standard covers all h/u costs including cooling expenses. FAP groups that qualify for the h/u standard do not receive any other individual utility standards. FAP groups whose heat is included in the cost of their monthly rent may still be eligible for the h/u standard if: they are billed for excess heat payments from their landlord; they have received a home heating credit in an amount greater than \$█ for the applicable period; or they have received a Low Income Home Energy Assistance Payment (LIHEAP) or a LIHEAP payment was made on their behalf in an amount greater than \$█ for the applicable period. Additionally, FAP groups who pay cooling (including room air conditioners) are eligible for the h/u standard if they verify their responsibility to pay for non-heat electric expenses. BEM 554, pp. 15-25. FAP groups not eligible for the h/u standard who have other utility expenses or contribute to the costs of other utility expenses are eligible for the individual utility standards. BEM 554, p. 21.

Petitioner confirmed that his monthly rent is \$█ and further, that while he is not responsible for heating expenses, he is responsible for in room air-conditioning cooling expenses that he pays through his electric bill. Thus, because the Department had verification of Petitioner's responsibility to pay for non-heat electric expenses and because Petitioner is responsible for cooling expenses, the Department should have applied the \$█ h/u standard when calculating Petitioner's excess shelter deduction and FAP eligibility.

Additionally, the budget shows that \$█ is being withheld from Petitioner's monthly FAP allotment through administrative recoupment to repay a previously established overissuance of FAP benefits. BAM 725 provides that active programs are subject to administrative recoupment (AR) for repayment of overissuances. FAP benefits are reduced for recoupment by a percentage of the monthly FAP entitlement. AR occurs

only on current month issuances and automatically changes when the monthly issuance amount changes. The standard AR percentages for FAP are: 10 % (or \$10, whichever is greater) for agency or client error and 20% (or \$20, whichever is greater) for intentional program violation. BAM 725 (January 2017), pp. 6-8.

The Department testified that it has been administratively recouping Petitioner's overissued FAP benefits since as early as [REDACTED] however, the Department had no evidence regarding when the overissuance was established, the amount, the period for which Petitioner was overissued benefits and whether the overissuance was due to agency error, client error, or intentional program violation. Thus, the Department failed to satisfy its burden in showing that the \$ [REDACTED] monthly withholding was appropriate.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it calculated the amount of Petitioner's FAP benefits for [REDACTED], ongoing.

### **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 [REDACTED], ongoing;
2. Issue FAP supplements to Petitioner from [REDACTED], ongoing, for any FAP benefits he was eligible to receive but did not, in accordance with Department policy; and
3. Notify Petitioner of its decision in writing.

ZB/jaf



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**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

**DHHS**

[REDACTED]

**Petitioner**

[REDACTED]  
[REDACTED]  
[REDACTED]

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