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GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

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Date Mailed: August 18, 2017
MAHS Docket No.: 17-009089
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 ██████████, Hearing Facilitator.

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. Petitioner was previously approved for FAP benefits in the amount of \$ ██████████
2. In connection with a redetermination, Petitioner's eligibility to receive FAP benefits was reviewed. Petitioner completed and timely submitted her FAP redetermination to the Department. (Exhibit A, pp. 5-11)
3. Petitioner did not report any changes with respect to her household group composition and income on her redetermination.

4. The Department discovered that Petitioner's daughter, [REDACTED] had biweekly earned income from her employment at [REDACTED] and monthly earned income as a home help provider.
5. On [REDACTED], the Department sent Petitioner a Notice of Case Action advising her that effective [REDACTED], she was approved for FAP benefits in the amount of \$ [REDACTED] for her household group size of [REDACTED] people. (Exhibit A, pp. 19-20)
6. Petitioner has confirmed gross monthly unearned income from Supplemental Security Income (SSI) in the amount of \$ [REDACTED] and receives quarterly State SSI Payments (SSP).
7. Petitioner is responsible for heat and utility expenses.
8. On [REDACTED], Petitioner requested a hearing disputing the decrease in her FAP benefits effective [REDACTED]. (Exhibit A, p. 3)

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 after processing Petitioner's redetermination and including the income discovered for Petitioner's daughter, [REDACTED] it determined that she and her group members were eligible for \$ [REDACTED] in monthly FAP benefits. 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. 35-36)

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 determines a client's eligibility for program benefits based on the client's actual income and/or prospective income. Prospective income is income not yet received but expected. BEM 505 (April 2017), pp. 1-2. In prospecting income, the Department is required to use income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month, discarding any pay if it is unusual and

does not reflect the normal, expected pay amounts. BEM 505, pp. 5-6. A standard monthly amount must be determined for each income source used in the budget. BEM 505, pp. 7-8. Income received biweekly is converted to a standard amount by multiplying the average of the biweekly pay amounts by the 2.15 multiplier. BEM 505, pp. 7-9. An employee's wages include salaries, tips, commissions, bonuses, severance pay and flexible benefit funds not used to purchase insurance. The Department counts gross wages in the calculation of earned income. BEM 501 (July 2016), pp. 6-7.

According to the budget provided, the Department concluded that Petitioner's group had earned income in the amount of \$[REDACTED] which it testified consisted of Petitioner's daughter's biweekly earnings from employment at [REDACTED] and monthly earnings as a home help provider. Specifically, the Department stated that it relied on the Work Number and considered \$[REDACTED] paid on [REDACTED], and \$[REDACTED] paid on [REDACTED]. (Exhibit A, pp. 29-30) The Department also stated it considered \$[REDACTED] in monthly earnings from her home help provider income. Upon further review of the income amounts considered by the Department and in consideration of the above referenced prospective budgeting policy, Petitioner's total earned income does not equal \$[REDACTED]. Thus, the Department did not establish that it properly calculated Petitioner's earned income.

The Department considers the gross amount of money earned from Supplemental Security Income (SSI) in the calculation of unearned income for purposes of FAP budgeting. BEM 503 (July 2017), pp. 35-36. For an individual who lives in an independent living situation, State SSI Payments (SSP) are issued quarterly in the amount of \$[REDACTED] and the payments are issued in the final month of each quarter; see BEM 660. The Department will count the monthly SSP benefit amount (\$[REDACTED]) as unearned income. BEM 503, p. 33; BEM 660 (January 2017), pp. 1-2; RFT 248 (January 2017), p. 1.

The Department concluded that Petitioner had unearned income of \$[REDACTED] which it testified consisted of \$[REDACTED] in SSI benefits and \$[REDACTED] in SSP benefits. Although the Department did not present a State Online Query (SOLQ) in support of its testimony, Petitioner confirmed that the amounts relied upon were correct. Therefore, the Department properly calculated Petitioner's gross income.

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, because the earned income was not properly calculated, it follows that the \$ [REDACTED] earned income deduction applied by the Department is also incorrect. 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 testified that it applied a \$ [REDACTED] standard deduction based on a FAP group size of [REDACTED]. Petitioner testified that her FAP group size is [REDACTED] and that her daughter, [REDACTED] had not been living in her home since the end of [REDACTED] or beginning of [REDACTED]. Petitioner did not report this change on the redetermination submitted to the Department on [REDACTED], however. Although Petitioner testified that she verbally informed her case worker at the end of [REDACTED] that [REDACTED] was no longer in her home, based on the information available to the Department at the time the redetermination was processed and her [REDACTED] budget calculated, the Department applied the correct group size of [REDACTED] and considered [REDACTED] income in the FAP benefit eligibility determination.

With respect to the excess shelter deduction, the Department testified that it considered housing expenses of \$ [REDACTED] consisting of Petitioner's monthly rent and the \$ [REDACTED] heat and utility (h/u) standard. See BEM 554. Petitioner disputed that her monthly rent is \$ [REDACTED] and testified that her rent has been \$ [REDACTED] since [REDACTED]. The Department did not present any supporting evidence as to its calculation of Petitioner's monthly rental housing expenses. Thus, although the Department properly applied the \$ [REDACTED] h/u standard, the Department failed to establish that it properly calculated Petitioner's housing expenses, which could impact the excess shelter deduction.

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 because of the errors in the calculation of the earned income and excess shelter deduction, the Department did not act in accordance with Department policy when it determined that Petitioner was eligible for \$ [REDACTED] effective [REDACTED].

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 she was eligible to receive but did not, in accordance with Department policy; and

3. Notify Petitioner in writing of its decision.



ZB/jaf

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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