



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

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Date Mailed: September 12, 2017  
MAHS Docket No.: 17-009975  
Agency No.: ██████████  
Petitioner: ██████████

**ADMINISTRATIVE LAW JUDGE: Ellen McLemore**

**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 September 6, 2017, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by ██████████ ██████████, Eligibility Specialist; ██████████ ██████████, Family Independence Manager; and ██████████ ██████████, Regulation Agent of the Office of Inspector General.

**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.
2. The Department sent Petitioner a Notice of Case Action on ██████████ ██████████, stating her FAP benefits were being decreased to \$██████████ per month, effective ██████████ ██████████ (Exhibit A, pp. 1-5).
3. Petitioner has a group size of three, which includes her, her son and her ██████████-year-old daughter.

4. Petitioner has unearned income and Petitioner's daughter has earned income from her employment at [REDACTED]
5. On [REDACTED], Petitioner verbally requested a hearing disputing the calculation of her FAP benefits as of [REDACTED], ongoing.

### **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, the Department sent Petitioner a Notice of Case Action on [REDACTED], notifying her that her FAP benefits were being decreased to \$ [REDACTED] as of [REDACTED]. The Department sent a New Hire Notice to Petitioner, indicating her daughter had unreported income from [REDACTED]. However, after an investigation, the Department concluded Petitioner's daughter was not employed by [REDACTED]. Petitioner acknowledged her daughter was not employed at [REDACTED] and was only employed by [REDACTED]. The Department then retrieved Petitioner's daughter's Work Number from [REDACTED] and recalculated her FAP budget.

All countable earned and unearned income available to the client must be considered in determining a client's eligibility for program benefits. Group composition policies specify whose income is countable. BEM 500 (January 2016), 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. The Department can use income from the past 60 or 90 days for fluctuating or irregular income if: the past 30 days is not a good indicator of future income and the fluctuations of income during the past 60 or 90 days appear to accurately reflect the income that is expected to be received in the benefit month. BEM 505, p. 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. Income received weekly is converted to a standard amount by multiplying the average of the weekly pay amounts by the 4.3 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. BEM 501 (July 2017), p. 6. The Department counts gross wages in the calculation of earned income. BEM 501, p. 7.

According to the budget provided, the Department concluded Petitioner's group had earned income in the amount of \$ [REDACTED] which it testified consisted of earnings from Petitioner's daughter's employment at [REDACTED]. Specifically, the Department stated it relied on the employment verification retrieved through Work Number (Exhibit B, pp. 1-3). The Department stated it averaged Petitioner's daughter's gross income from [REDACTED]. Upon further review of the income amounts considered by the Department and in consideration of the prospective budgeting policy referenced above, Petitioner's total earned income does not equal \$ [REDACTED]. Thus, the Department did not establish that it properly calculated Petitioner's daughter's earned income.

The Department also included Petitioner's unearned income from her Supplemental Security Income (SSI) and State SSI Payment (SSP) benefits that it retrieved from State Online Query (SOLQ) in the amount of \$ [REDACTED]. Petitioner acknowledged that figure was correct. Therefore, the Department correctly determined Petitioner's unearned income.

The deductions to income on the net income budget were also reviewed. There was evidence presented that Petitioner's group includes a senior/disabled/veteran (SDV) household member, as Petitioner receives SSI. BEM 550 (January 2017), 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.
- Medical deduction.
- 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 calculated by the Department is also incorrect. There was no evidence presented that Petitioner had any out-of-pocket dependent care, child support expenses or out-of-pocket medical expenses. Therefore, the budget properly excluded any deduction for dependent care, child support or medical expenses. The Department also correctly determined Petitioner's FAP benefit group size of [REDACTED] justifies a standard deduction of \$ [REDACTED] RFT 255 (October 2016), p. 1.

In calculating the excess shelter deduction of \$ [REDACTED] the Department stated that it considered Petitioner's verified housing expense of \$ [REDACTED] and that she was responsible for a monthly heating expense, entitling her to the heat/utility standard of \$ [REDACTED] BEM 554, pp. 14-15. The Department testified when calculating Petitioner's excess shelter amount they added the total shelter amount and subtracted 50% of the adjusted gross income. As the Department did not correctly determine the correct adjusted gross income, the excess shelter deduction was also improperly calculated.

Upon further review and based on the evidence presented, notwithstanding all of the proper calculations made by the Department, because the Department did not establish that it properly calculated Petitioner's daughter's earned income, the Department failed to establish that it properly calculated Petitioner's FAP benefits in the amount of \$ [REDACTED] effective [REDACTED].

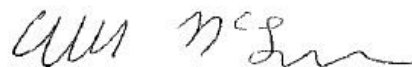
### **DECISION AND ORDER**

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it calculated 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. Recalculate Petitioner's FAP budget for [REDACTED], ongoing.
2. If Petitioner is eligible for FAP benefits, issue supplements for any FAP benefits she was eligible to receive but did not from [REDACTED], ongoing.
3. Notify Petitioner of its FAP decision in writing.



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**Ellen McLemore**  
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]  
[REDACTED]