



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]

Date Mailed: September 19, 2017  
MAHS Docket No.: 17-010692  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Kevin Scully

**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; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, telephone hearing was held on September 12, 2017, from Lansing, Michigan. The Petitioner represented herself. The Department was represented by [REDACTED] [REDACTED] Hearing Facilitator, and [REDACTED] [REDACTED] Eligibility Specialist.

**ISSUE**

Did the Department of Health and Human Services (Department) properly determine Petitioner's eligibility for 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 Food Assistance Program (FAP) recipient as a group of two.
2. A member of Petitioner's household receives monthly Supplemental Security Income (SSI) in the gross monthly amount of \$ [REDACTED] Exhibit A, pp 6-7.
3. On July 25, 2017, the Department determined that Petitioner's household received monthly earned income from employment in the gross monthly amount of \$ [REDACTED]

4. On August 8, 2017, the Department revised its determination of Petitioner's monthly earned income to \$ [REDACTED]
5. Petitioner has no verified housing expenses but is responsible for heating costs.
6. On August 8, 2017, Petitioner is not receiving an earned income deduction. Exhibit A, p 24.
7. On August 8, 2017, the Department notified Petitioner that she was approved for a \$ [REDACTED] monthly allotment of Food Assistance Program (FAP) benefits effective July 1, 2017. Exhibit A, pp 10-15.
8. On August 7, 2017, the Department received Petitioner's request for a hearing protesting the amount of her monthly allotment of Food Assistance Program (FAP) benefits. Exhibit A, pp 2-3.

### **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.

When determining eligibility for FAP benefits, the Department will budget the entire amount of earned and unearned countable income. Gross countable earned income is reduced by a 20 percent earned income deduction. Department of Health and Human Services Bridges Eligibility Manual (BEM) 550 (January 1, 2017), p 1.

Petitioner is an ongoing FAP recipient as a group of two. A member of Petitioner's household received SSI in the gross monthly amount of \$ [REDACTED]. On July 25, 2017, the Department determined that Petitioner's household received monthly earned income from employment in the gross monthly amount of \$ [REDACTED]. On August 8, 2017, the Department revised its determination of Petitioner's monthly earned income to \$ [REDACTED].

On August 8, 2017, the Department notified Petitioner that she was eligible for a \$ [REDACTED] monthly allotment of FAP benefits but the notice of case action does not support a finding that Petitioner was given an earned income credit. Before revising its determination of Petitioner's prospective monthly earned income, Petitioner had been receiving the earned income deduction.

The production of evidence to support the department's position is clearly required under BAM 600 as well as general case law (see e.g., *Kar v Hogan*, 399 Mich 529; 251 NW2d 77 [1976]). In *McKinstry v Valley Obstetrics-Gynecology Clinic, PC*, 428 Mich167; 405 NW2d 88 (1987), the Michigan Supreme Court addressed the issue of burden of proof, stating in part:

The term "burden of proof" encompasses two separate meanings. [citation omitted.] One of these meanings is the burden of persuasion or the risk of nonpersuasion. The other is the risk of going forward or the risk of nonproduction. The burden of producing evidence on an issue means the liability to an adverse ruling (generally a finding or a directed verdict) if evidence on the issue has not been produced. It is usually on the party who has pleaded the existence of the fact, but..., the burden may shift to the adversary when the pleader has discharged [its] initial duty. The burden of producing evidence is a critical mechanism[.]

The burden of persuasion becomes a crucial factor only if the parties have sustained their burdens of producing evidence and only when all of the evidence has been introduced.

*McKinstry*, 428 Mich at 93-94, quoting *McCormick*, Evidence (3d ed), Sec. 336, p. 946.

In this case, something happened that caused the Department to revise Petitioner's prospective earned income from the monthly amount of \$ [REDACTED] to \$ [REDACTED]. The hearing record is inadequate to determine why she no longer is receiving the earned income deduction after this change. Since monthly income is an essential element in the determination of the household's eligibility for FAP benefits, the Department has failed to establish that it properly determined Petitioner's monthly FAP allotment.

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 determined Petitioner's monthly allotment of Food Assistance Program (FAP) benefits.

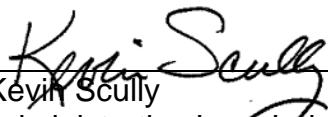
**DECISION AND ORDER**

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:

Initiate a determination of the Petitioner's eligibility for Food Assistance Program (FAP) benefits in accordance with policy effective June 1, 2017.

KS/nr

  
\_\_\_\_\_  
Kevin Scully  
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]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Petitioner

[REDACTED]