



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: April 18, 2017
MAHS Docket No.: 17-002028
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Michael J. Bennane

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; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on [REDACTED], from [REDACTED] Michigan. Petitioner appeared and represented herself. [REDACTED], Eligibility Specialist/Hearing Facilitator, appeared on behalf of the Department of Health and Human Services (Department).

The Department offered the following exhibits which were marked and admitted into evidence: [Dept. Exh. A: Semi Annual Contact Report; Dept. Exh. B: The Work Number ([REDACTED]); Dept. Exh. C: Bridges FAP-EDG Net Income Results; Dept. Exh. D: Bridges FAP-EDG Net Income Results; and Dept. Exh. E: Notice of Case Action (1/26/17)].

Petitioner did not offer any exhibits into evidence.

The record closed at the conclusion of the hearing.

ISSUE

Did the Department properly reduce Petitioner's monthly Food Assistance Program (FAP) benefit monthly allotment?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. At the relevant time, Petitioner was receiving \$ [REDACTED] in FAP benefits per month for a group size of three. Petitioner was employed through [REDACTED] and had a total monthly earned income amount of \$ [REDACTED] [Dept. Exh. D].

2. On or about [REDACTED], Petitioner submitted a Semi-Annual Contact Report, which, among other things, indicated that she did not have any changes. [Dept. Exh. A].
3. The Department accessed The Work Number, which indicated that Petitioner's income had increased to \$ [REDACTED]. [Dept. Exh. B].
4. The Department recalculated Petitioner's FAP eligibility and determined that she was now eligible for \$ [REDACTED] per month. [Dept. Exh. C].
5. On [REDACTED], the Department mailed Petitioner a Notice of Case Action, which approved a decrease in monthly FAP to \$ [REDACTED] effective for the periods of [REDACTED], through [REDACTED], and [REDACTED], through [REDACTED]. [Dept. Exh. E].
6. Petitioner requested a hearing on [REDACTED] to dispute the decrease in her monthly FAP benefits. [Request for Hearing].

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 the instant matter, Petitioner requested a hearing because she did not understand why her monthly FAP benefits decreased from \$ [REDACTED] to \$ [REDACTED]. The Department contends that Petitioner's monthly FAP benefits decreased due to a recent increase in income. Petitioner states that her monthly income had not changed, and she disputed the Department's determination that she had an increase in her income.

The Department uses countable income to determine eligibility and benefit levels. Income remaining after applying the policy in the income related items is called **countable**. For FAP purposes, all earned and unearned income available to an applicant or recipient is countable. Earned income means income received from another person or organization or from self-employment for duties that were performed for compensation or profit. Unearned income means all income that is not earned, including but not limited to funds received from the Family Independence Program (FIP), State Disability Assistance (SDA), Child Development and Care (CDC), Medicaid

(MA), Social Security Benefits (Retirement, Survivors and Disability Insurance/Supplemental Security Income) (RSDI/SSI), Veterans Administration (VA), Unemployment Compensation Benefits (UCB), Adult Medical Program (AMP), alimony, and child support payments. BEM 500, (1-1-2016), p. 3.

The Department uses gross income when determining countable income. Gross income is the amount of income before any deductions such as taxes or garnishments. The amount counted may be more than the client actually receives. However, the amount of self-employment income before any deductions is called total proceeds. The gross amount of self-employment income means the amount after deducting allowable expenses from total proceeds, but before any other deductions. BEM 500, p. 4.

Wages are the pay an employee receives from another individual or organization. Wages include salaries, tips, commissions, bonuses, severance pay and flexible benefit funds not used to purchase insurance. The Department uses the following sources of verification for tips: (1) a pay stub if client confirms the accuracy of the amount listed on the pay stub. (Tips shown on pay stubs are often a percentage of sales for tax purposes.); or (2) client statement. BEM 501. For general wages, salaries and commissions, the Department uses the following as acceptable verifications: (1) check stubs or earnings statement; (2) DHS verification of employment forms, for example DHS-38, Verification of Employment; (3) Employer signed statement providing all necessary information; (4) Employer generated work schedule, when pay frequency, pay day and rate of pay are known; (5) The Work Number; (6) Employment services contractors including the one-stop service center, the work participation provider and refugee employment services contractors; and (7) starting or increasing income. BEM 501 (7-1-2016), p. 11.

The Department determines a group's benefits for a month based, in part, on a prospective income determination. BEM 505, (7-1-2016) p. 1. A best estimate of income expected to be received by the group during a specific month is determined and used in the budget computation. The Department will obtain input from the client whenever possible to establish this best estimate amount. The client's understanding of how income is estimated reinforces reporting requirements and makes the client an active partner in the financial determination process. BEM 505, p. 1.

A group's financial eligibility and monthly benefit amount are determined using actual income (income that was already received) and prospected income amounts (not received but expected). Only countable income is included in the determination; see BEM 500, p. 1.

Each source of income is converted to a standard monthly amount, unless a full month's income will not be received. The Department will determine budgetable income using countable, available income for the benefit month being processed. But prospective income **may** be used for past month determinations when all of the following are true: (1) income verification was requested and received; (2) payments were received by the client after verifications were submitted and (3) there are no known changes in the

income being prospected. For current and future months, policy indicates that the Department should prospect income using a best estimate of income expected to be received during the month (or already received). (Whenever possible, the Department should seek input from the client to establish an estimate). To prospect income, the Department will need to know: (1) the type of income and the frequency it is received (such as, weekly); (2) the day(s) of the week paid; (3) the date(s) paid; (4) the gross income amount received or expected to be received on each pay date. BEM 505, p. 4.

When the income amount changes, the Department will adjust the amount(s) being budgeted for future pay periods. For earned income, if the rate of pay changes, but hours are expected to remain the same, the Department will use the past hours worked times the new rate of pay to determine the amount to budget for future pay periods. If there is a change in expected hours, but no change in the rate of pay, the Department will use the expected hours times the rate of pay to determine the amount to budget per pay period. If payments in the new amount have been received and they are accurate reflections of the future income, the Department will use them in the budget for future months. BEM 505, p. 7.

All income is converted to a standard monthly amount. The Department will convert stable and fluctuating income that is received more often than monthly to a standard monthly amount. If the client is paid weekly, the Department multiplies the average weekly amount by **4.3**. If the client is paid every other week, the Department multiplies the average bi-weekly amount by **2.15**. Amounts that are received twice a month are added. But the Department should not convert income for the month income starts or stops if a full month's income is not expected in that month. The Department will use actual income received or income expected to be received in these months. BEM 505, p. 9.

BEM 550 (1/1/2017) describes income budgeting policy. When the Department budgets the amount of FAP for a group, it first determines whether there is a senior¹, disabled person² or a veteran member of that group. A non-categorically eligible Senior/Disabled/Veteran (SDV) FAP group³ must have income below the net income limits. A non-categorically eligible, non-SDV FAP group must have income below the gross and net income limits. BEM 550, p. 1.

The Department will use only available, countable income to determine eligibility. BEM 550. It will always calculate income on a calendar month basis to determine eligibility and benefit amounts and use income from a month specified in this item for the benefit month being considered. BEM 550, p. 1.

¹ A "senior" is a person at least 60 years old. BEM 550 p 1.

² A "disabled" person who receives one of the following: (1) a federal, state or local public disability retirement pension and the disability is considered permanent under the Social Security Act; (2) Medicaid program which requires a disability determination by MRT or Social Security Administration; (3) Railroad Retirement and is eligible for Medicare or meets the Social Security disability criteria (4) a person who receives or has been certified and awaiting their initial payment for one of the following: (a) Social Security disability or blindness benefits; (b) Supplemental Security Income (SSI), based on disability or blindness, even if based on presumptive eligibility.

³ An SDV FAP group is one which has an SDV member. BEM 550 p 1.

The Department will budget the entire amount of earned and unearned countable income. Gross countable earned income is reduced by a 20% earned income deduction. Every case is allowed the standard deduction shown in RFT 255. The Department documents income budgeting on either a manually-calculated or an automated FAP worksheet. BEM 550, p. 1.

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. Based upon the above Findings of Fact, Petitioner was receiving monthly earned income from her employment through [REDACTED] in the amount of \$ [REDACTED] at the time relevant to this matter. [Dept. Exh. C]. According to the Work Number in the record, Petitioner worked 40 hours per week and was paid weekly. [Dept. Exh. B]. The record shows that Petitioner earned \$ [REDACTED] per week in late [REDACTED] and in early [REDACTED]. [Dept. Exh. B]. However, Petitioner's weekly gross earnings for the pay periods ending on [REDACTED], and [REDACTED], increased to \$ [REDACTED] and \$ [REDACTED] respectively. [Dept. Exh. B]. Therefore, Petitioner's group received a total monthly income of \$ [REDACTED] which is reduced by a 20% earned income deduction of \$ [REDACTED] and a standard deduction of \$ [REDACTED] which leaves an adjusted gross income of \$ [REDACTED] [Dept. Exh. C] and BEM 550, p. 1. An excess shelter deduction of \$ [REDACTED] was subtracted from Petitioner's adjusted gross income of \$ [REDACTED] resulting in Petitioner receiving \$ [REDACTED] in net income. [Dept. Exh. C].

An individual with a group size of three has a maximum monthly net income limit of \$ [REDACTED] RFT 250 (10-1-2016). Because Petitioner had a certified group size of three and a total countable monthly income of \$ [REDACTED] the food issuance tables indicate that the proper monthly FAP allotment is \$ [REDACTED] RFT 260 (10-1-2016), p. 14. Therefore, the Department properly determined that Petitioner's monthly FAP allotment was \$ [REDACTED]

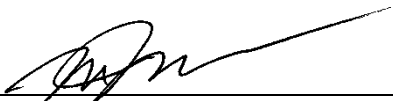
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department acted in accordance with Department policy when it decreased Petitioner's monthly FAP allotment from \$ [REDACTED] to \$ [REDACTED]

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.

IT IS SO ORDERED.

CAP for MJB/jaf



Michael J. Bennane
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]