



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

Date Mailed: May 26, 2017
MAHS Docket No.: 17-005103
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 May 17, 2017, from Detroit, Michigan. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Angela Sykes, Assistance Payment Supervisor, and Ashley Thomas, Eligibility Specialist.

ISSUE

Did the Department properly determine Petitioner's Food Assistance Program (FAP) eligibility for October 2016 ongoing?

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. Petitioner had four individuals in her household: her, her husband, and her two sons, one a 19-year-old college student and the other a 24-year-old college student. Neither of Petitioner's sons were employed 20 or more hours per week.
3. No one in Petitioner's household is over age 60, disabled or a disabled veteran.
4. Petitioner had monthly mortgage payments of \$766.55; yearly homeowner's insurance policy payments of \$839; and yearly property taxes of \$4,500.

5. No one in Petitioner's household is responsible for child support expenses or dependent care expenses.
6. Petitioner stopped receiving FAP benefits effective October 1, 2016; Petitioner was not sent a notice of case action advising her of a case closure.
7. On [REDACTED] 2017, Petitioner reapplied for FAP benefit, but the Department requested that she complete a redetermination because her case was showing as still open.
8. Petitioner submitted a completed redetermination on March 2, 2017 (Exhibit 2).
9. On March 24, 2017, the Department sent Petitioner a Notice of Case Action notifying her that her FAP case closed effective October 1, 2016 (Exhibit 3).
10. On [REDACTED], 2017, the Department received Petitioner's request for hearing disputing the Department's actions concerning her FAP case.

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.

Petitioner requested a hearing disputing the Department's actions concerning her FAP case. At the hearing, the Department acknowledged it had erroneously processed Petitioner's FAP case, ultimately sending her the March 24, 2017 Notice of Case Action notifying her that her FAP case closed effective October 1, 2016. After it became aware of its error, the Department reinstated Petitioner's FAP case, notifying her in an April 18, 2017 Notice of Case Action that she was approved for monthly FAP benefits of \$36 for October 1, 2016 to January 31, 2017 and monthly FAP benefits of \$16 for February 1, 2017 ongoing. Petitioner acknowledged receiving a \$144 supplement for FAP benefits the Department advised her that she was eligible to receive from October 1, 2016 to January 31, 2017 and ongoing monthly FAP benefits of \$16 but disputed the amount of her monthly benefits.

The Department explained that, although Petitioner had four individuals living in her household (her, her husband and their two children), the FAP group consisted of only her and her husband because her children were ineligible FAP recipients due to their student status. A person between age 18 and 49 and enrolled half-time or more in college is an ineligible student for FAP purposes unless he or she meets one of the eligibility criteria outlined in policy, which includes participating in a work-study program; being employed for at least 20 hours weekly and paid for such employment; having self-employment for at least 20 hours weekly and earning weekly income at least equivalent to the federal minimum wage multiplied by 20 hours; being mentally or physically unfit to work; or caring for a minor child. BEM 245 (October 2015), pp. 3-4. Student status continues during official school vacations and periods of extended illness but does not continue if the student is suspended or does not intend to register for the next school term (excluding summer term). BEM 245, p. 5. Petitioner testified that her sons were full-time college students and did not meet any of the criteria for eligible status. Based on Petitioner's testimony, her children were not eligible FAP members. Therefore, the Department properly included only Petitioner and her husband in Petitioner's FAP group.

The Department presented a FAP net income budget showing the information it used to calculate Petitioner's monthly \$16 FAP benefits for February 1, 2016 ongoing (Exhibit 5). The budget showed gross monthly earned income of \$2365. The Department explained that the income was based on Petitioner's husband's monthly \$240 employment income (Exhibit 10) and Petitioner's employment income from her employment at [REDACTED]. The Department testified that in calculating Petitioner's income it used her gross monthly income for March 2017 (Exhibit A, pp. 5-6, 15).

Department policy provides that in determining FAP budgetable income, the Department must use countable, available income *for the benefit month being processed*. BEM 505 (April 2017), p. 3. In budgeting income for a past benefit month, the Department must use *actual* gross income amounts received those past months, converting to a standard monthly amount, when appropriate, unless all of the following are true: (i) income verification was requested and received, (ii) payments were received by the client after verifications were submitted, and (iii) there are no known changes in the income being prospecting. BEM 505, p. 3. Because the Department failed to establish that the exception applied, the Department did not act in accordance with Department policy when it did not use actual income available to it from the Work Number in determining Petitioner's income for October 2016 to February 2017. Therefore, the Department did not satisfy its burden of showing that it properly processed Petitioner's FAP budget and FAP benefits for October 2016 to February 2017.

Department policy provides that to determine *future months' income*, the Department must prospect income using a best estimate of income expected to be received during the month. BEM 505 (April 2017), p. 2. Past income for the past 30 days is used to prospect income for the future if it appears to accurately reflect what is expected to be received in the benefit month. BEM 505, p. 5. Under Department policy, the average

weekly total of 30 days' income is multiplied by 4.3 to determine gross monthly pay based on weekly pay. BEM 505, p. 7-8.

In this case, Petitioner's employment income in March 2017 consisted of the following: March 7, 2017 (\$511.95); March 14, 2017 (\$496.80); March 21, 2017 (\$484.08); and March 28, 2017 (\$484.80) (Exhibit A, pp. 5-6, 15). Based on Petitioner's employment income in March 2017, her gross monthly income is \$2125. The sum of Petitioner's \$2125 gross monthly income and her husband's \$240 gross monthly income is \$2365, as calculated by the Department and shown in the budget. Therefore, the Department acted in accordance with Department when it calculated Petitioner's March 2017 income and prospected the household's future income based on Petitioner's 30 days of earned income in March 2017.

With respect to Petitioner's FAP benefits for March 2017 ongoing, the deductions to gross monthly income were also reviewed with Petitioner. Because there was no evidence that anyone in Petitioner's FAP group was over age 60, disabled or a disabled veteran (Exhibit 2, p. 2), the household has no senior/disabled/veteran (SDV) members in the FAP group. See BEM 550 (January 2017), pp 1-2. For FAP groups with earned income but no SDV members, the Department must reduce the household's gross monthly income by the following deductions: the earned income deduction, the standard deduction (based on group size), unreimbursed child care expenses, child support expenses, and the excess shelter deduction. BEM 554 (January 2017), p. 1; RFT 255 (October 2016), p. 1.

As discussed above, Petitioner's FAP group has two members; as such, it is eligible for a \$151 standard deduction, as shown on the budget. Petitioner was eligible for an earned income deduction of 20% of her household's total gross earned income of \$2365, or \$473 in this case, as shown on the budget. Because Petitioner's FAP group had no day care or child support expenses, the budget properly showed no deductions for those expenses. Petitioner's FAP group's monthly gross income of \$2365 reduced by the two available deductions, the \$473 earned income deduction and the \$151 standard deduction, results in adjusted gross income of \$1,741.

The final deduction available in calculating FAP benefits is the excess shelter deduction, is determined by reducing (i) the sum of Petitioner's monthly shelter expenses and the applicable utility standard for any utilities she is responsible to pay by (ii) 50% of Petitioner's adjusted gross income, or \$870 in this case. BEM 556, pp. 4-5. However, because there are no SDV members in the household, the excess shelter deduction cannot exceed \$517. BEM 554 (January 2017), p. 1; RFT 255 (October 2016), p. 1.

Because Petitioner owns her housing, she is eligible for the \$526 mandatory h/u standard, the most favorable utility standard available to a client. BEM 554, pp. 16-20. The Department based Petitioner's shelter expenses on her monthly mortgage expenses of \$766.55, monthly homeowner's insurance premiums of \$69.92 (based on annual expenses of \$839), and monthly property tax expenses of \$375 (based on annual expenses of \$4,500). Petitioner confirmed these figures. The sum of

Petitioner's monthly housing expenses total \$1211.47, as shown on the FAP budget in the April 18, 2017 Notice of Case Action. Her shelter expenses therefore total \$1737.47 (her \$1211.47 monthly housing expenses plus the \$526 h/u standard). This total reduced by \$870 (50% of Petitioner's adjusted gross income) results in an amount greater than \$517. Therefore, Petitioner's excess shelter deduction is limited to \$517.

When Petitioner's adjusted gross income of \$1,741 is reduced by the \$517 excess shelter deduction, Petitioner's net income is \$1224. Based on net income of \$1224 and a FAP group size of two, Petitioner was eligible for \$16 in monthly FAP benefits for March 2017 ongoing. Therefore, the Department properly calculated Petitioner's FAP benefits for March 2017 ongoing.

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 acted in accordance with Department policy when it calculated Petitioner's FAP benefits for March 2017 ongoing but failed to satisfy its burden of showing that it acted in accordance with Department policy when it calculated Petitioner's FAP benefits for October 2016 to February 2017.

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 October 2016 to February 2017 based on Petitioner's actual earned income those months;
2. Issue supplements to Petitioner for any FAP benefits she is eligible to receive but did not; and
3. Notify Petitioner in writing of its decision.

ACE/tlf



Alice C. Elkin
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

Via Email:

MDHHS-Wayne-18-Hearings@michigan.gov
BSC4 Hearing Decisions
M. Holden
D. Sweeney
MAHS

**Petitioner –
Via First-Class Mail:**

[REDACTED]
[REDACTED]
[REDACTED]