



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: August 4, 2017
MAHS Docket No.: 17-007907
Agency No.: [REDACTED]
Petitioner: [REDACTED]

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, an in-person hearing was held on August 2, 2017, from Southfield, Michigan. The Petitioner was not present for the hearing. Petitioner's husband [REDACTED] appeared for the hearing with Authorized Hearing Representative (AHR) [REDACTED]. The Department of Health and Human Services (Department) was represented by Serlibrity Good, Assistance Payment Worker.

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 in the amount of \$398.
2. In connection with a redetermination, Petitioner's eligibility to receive FAP benefits was reviewed. (Exhibit A, pp. 7-14)
3. Petitioner's household size for FAP purposes is four.
4. Petitioner's daughter has biweekly earnings from her employment with [REDACTED] [REDACTED]. (Exhibit A, pp. 30-33)

5. Petitioner is the owner of [REDACTED] an S-Corporation. Petitioner's husband is an employee of [REDACTED], and receives gross weekly income in the amount of \$300. (Exhibit A, pp. 17-29)
6. Petitioner has confirmed housing expenses consisting of monthly rent in the amount of \$1475 and is responsible for heat and utility expenses. (Exhibit A, p. 34)
7. On May 23, 2017, the Department sent Petitioner a Notice of Case Action (Notice) advising her that for the month of May 2017, she was approved for FAP benefits in the amount of \$125. The Notice further advised Petitioner that effective June 1, 2017, ongoing, she was approved for FAP benefits in the amount of \$197. (Exhibit A, pp. 39-42)
8. On June 9, 2017, Petitioner requested a hearing disputing the amount of her FAP benefits, asserting that the Department incorrectly calculated the household's income.

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 amount of her FAP benefits. At the hearing, Petitioner's husband and her AHR clarified that at issue was the decrease in FAP benefits to \$125 effective May 1, 2017. The Department testified that in connection with a redetermination, Petitioner's FAP eligibility was reviewed. The Department stated that after updating the income information on Petitioner's FAP case, it determined that her household was eligible for \$125 effective May 1, 2017. 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 B)

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 (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. 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.

Wages are the pay an employee receives from another individual organization or S-Corp/LLC. 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. Additionally, the Department is to count the income a client receives from an S-Corp or LLC as wages, even if the client is the owner. BEM 501 (July 2016), pp. 4-7.

According to the budget provided, the Department concluded that Petitioner's group had earned income eligible for the earned income deduction in the amount of \$1531 which it testified consisted of Petitioner's daughter's earnings from employment. Specifically, the Department relied on the paystubs provided with the redetermination and considered biweekly earnings of \$705 paid on April 3, 2017 and \$720 paid on April 17, 2017. The paystubs were presented for review and Petitioner's husband confirmed that the figures relied upon were correct. Upon further review of the income amounts relied upon and in consideration of the prospective budgeting policy referenced above, the Department properly determined that Petitioner's daughter had earned income for FAP purposes of \$1531.

The budget shows that the Department concluded that Petitioner's group had earned income ineligible for earned income deduction in the amount of \$1200 which it testified consisted of Petitioner's husband's \$300 weekly earnings from his employment with Petitioner's S-Corp. Although the Department properly prospectively budgeted the earnings to be \$1200, it was unclear, and the Department remained unable to explain, why this was determined to be ineligible for the earned income deduction.

At the hearing, Petitioner's husband and AHR asserted that the Department was improperly calculating the income from the S-Corp, as according to the 2016 tax return provided, the company had a business loss and did not profit. Petitioner's husband testified that the Department had previously budgeted the income from [REDACTED], as self-employment income and considered business receipts to show losses and expenses. The AHR further stated that the Department requested that Petitioner submit income and expense statements for prior months to calculate the self-employment income. While Department policy provides that individuals who run their own businesses are self-employed, policy further provides that S-Corporations are not self-employment. BEM 502 (January 2017), p. 1. Petitioner's husband confirmed that he

receives the gross weekly income of \$300 whether there is a documented loss or profit in the business. As such, the Department properly determined that Petitioner's husband's earnings from the S-Corp are considered wages for FAP purposes and are to be included in the calculation of the group's earned income.

The deductions to income on the net income budget were also reviewed. There was no evidence presented that Petitioner's group includes a senior/disabled/veteran (SDV) household member. BEM 550 (October 2015), 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.
- 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, although the Department properly concluded that Petitioner's group had net total earned income of \$2731, the Department applied the 20% earned income deduction only to the \$1531 in earnings for Petitioner's daughter. The Department could not explain why the \$1200 in wages for Petitioner's husband was ineligible for the earned income deduction. Based on the evidence presented, the \$1200 should have been included in the calculation of the household's earned income eligible for the 20% earned income deduction. Thus, the Department failed to establish that the \$307 earned income deduction was properly calculated.

There was no evidence presented that Petitioner had any out-of-pocket dependent care, or child support expenses. Therefore, the budget properly did not include any deduction for dependent care, or child support. Based on Petitioner's confirmed four person group size, the Department properly applied the \$162 standard deduction. RFT 255 (October 2016), p. 1. In calculating the excess shelter deduction of \$517, the Department properly considered housing expenses of \$1475 consisting of Petitioner's confirmed monthly rent and the \$526 heat and utility standard based on Petitioner's responsibility for heat and utility expenses.

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 earned income eligible for earned income deduction and further the earned income deduction, the Department failed to establish that it properly calculated Petitioner's FAP benefits in the amount of \$125 effective May 1, 2017.

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 did not act in accordance with Department policy when it calculated Petitioner's FAP benefits.

Petitioner's husband raised additional concerns regarding the Department's subsequent removal/disqualification of Petitioner from the FAP group due to a failure to meet Time Limited Food Assistance work requirements. Petitioner's husband was advised that this was determined to be a subsequent negative action that required a new hearing request, as the Notice of Case Action advising Petitioner of the removal was issued after the current request for hearing. BAM 600 (October 2016).

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 May 1, 2017, ongoing;
2. Issue FAP supplements to Petitioner from May 1, 2017, 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 decisions.

ZB/tlf



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

(Via Email)

MDHHS-Oakland-3-Hearings
BSC4 Hearing Decisions
D. Sweeney
M. Holden
MAHS

(Via First-Class Mail)

Petitioner

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Authorized Hearing Rep.

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