



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: October 13, 2017
MAHS Docket No.: 17-009861
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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, an in-person hearing was held on October 4, 2017, from Warren, Michigan. Petitioner appeared and was represented by [REDACTED], [REDACTED], hearing facilitator, and Lynda Brown, hearing facilitator, testified on behalf of MDHHS. [REDACTED], assistant attorney general, appeared via telephone as Respondent's legal counsel.

ISSUE

The issue is whether MDHHS properly determined Petitioner's supplement of Food Assistance Program (FAP) following an administrative hearing decision.

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 FAP recipient.
2. From June 2016 through August 2017, Petitioner was a member of a 2-person FAP group which also included a non-disabled minor child (Child2).
3. Petitioner received ongoing child support for Child2 and an adult child (Child1).
4. On July 17, 2017, an administrative hearing decision ordered MDHHS to redetermine Petitioner's FAP eligibility from June 2016.
5. On July 18, 2017, MDHHS supplemented Petitioner's FAP eligibility from June 2016 through June 2017 in the amount of \$ [REDACTED]

6. From June 2016 through September 2017, MDHHS issued a total of \$ [REDACTED] in FAP benefits to Petitioner.
7. From June 2016 through September 2017, Petitioner was eligible to receive \$ [REDACTED] in FAP benefits.
8. On July 21, 2017, Petitioner requested a hearing to dispute the amount of the FAP supplement related to the administrative hearing order dated July 17, 2017.
9. On September 8, 2017, Petitioner requested a hearing to dispute the amount of the FAP benefit supplement and/or FAP eligibility for July 2017 and August 2017.
10. As of September 8, 2017, Petitioner did not report to MDHHS medical expenses for herself.

CONCLUSIONS OF LAW

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. MDHHS (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. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner submitted a hearing request dated July 21, 2017. Petitioner's hearing request disputed FAP eligibility related to an administrative hearing decision dated July 17, 2017.

MDHHS presented a Hearing Decision (Exhibit A, pp. 15-19) with a mailing date of July 7, 2017. The administrative decision ordered MDHHS to recalculate Petitioner's FAP eligibility from June 2016 and to issue according supplements. Specific direction on the recalculation was not listed within the order.

MDHHS presented an Administrative Hearing Order Certification (Exhibit A, p. 35) dated July 19, 2017. MDHHS documented that Petitioner was supplemented \$ [REDACTED] in FAP benefits. MDHHS further documented that the supplement was believed to satisfy the administrative order dated July 17, 2017.

MDHHS presented a Benefit Notice (Exhibit A, pp. 33-34) dated July 18, 2017. The notice informed Petitioner of a supplement of \$ [REDACTED] from a recalculation of FAP eligibility. The notice did not list a specific time period for which the supplement covered but it is presumed that the covered period is from June 2016 (the first month cited in the administrative decision order) and June 2017 (the month before the administrative decision mailing date).

Petitioner submitted a second hearing request on September 8, 2017. The requested disputed Petitioner's FAP eligibility for September 2017. Petitioner testified that the request was intended to dispute FAP eligibility through September 2017.

Petitioner's hearing requests functionally equated to a dispute of all FAP eligibility from June 2016 through September 2017. Petitioner presented various arguments to dispute the MDHHS calculations of FAP eligibility.

Petitioner and her attorney contended that MDHHS improperly calculated Petitioner's supplement because Petitioner's FAP eligibility was less than Petitioner received in past months. Neither Petitioner nor her attorney presented evidence to support the contention other than Petitioner's generic testimony.

FAP issuances are not dictated by a previous month's issuances. Assuming Petitioner's claims of higher past issuances was accurate, multiple reasons could justify the higher issuances without providing any insight into Petitioner's allegation that MDHHS improperly determined FAP eligibility in subsequent months. Common causes of benefit decreases include the following: increase in income, reduction of expenses, unverified expenses, a change in group members, and/or changes in MDHHS policy.

Petitioner's claim of an error based on past issuances was not insightful into whether MDHHS erred in calculating Petitioner's FAP eligibility. A proper method to determine if Petitioner is owed any FAP benefits is to calculate Petitioner's FAP eligibility from the disputed period against the amount of benefits issued by MDHHS. The analysis will proceed to consider whether MDHHS properly determined Petitioner's FAP eligibility for all 16 disputed benefit months.

During the hearing, MDHHS presented various documents to verifying benefits issuances and eligibility factors from the disputed benefit period. Unfortunately, not all presented documents were sufficient to determine all relevant benefit factors and issuance amounts.

Various documents were obtained after the hearing. The documents were obtained a from a non-MDHHS source and directly from the MDHHS database without ex-parte communication with either party. The documents included child support income for Child1 and Child2 (Exhibit B, pp. 1-4), a FAP budget from September 2017 (Exhibit B, pp. 5-6), and a FAP budget from July 2017 (Exhibit B, pp. 7-8). The child support documents are part of an exchange of information and have an inherent reliability of verifying child support income. The FAP budgets only reflect the numbers factored by MDHHS in determining Petitioner's eligibility and also have an inherent reliability of verifying the factors used by MDHHS. It is also worth noting that Petitioner did not specifically dispute either child support income or that presented budgets did not accurately reflect how MDHHS calculated Petitioner's eligibility. The documents were admitted as exhibits following the hearing, without notice to either party, and are factored in the below analysis.

BEM 556 outlines the factors and calculations required to determine FAP eligibility. The proceeding analysis will independently determine Petitioner’s entire FAP eligibility from the FAP period from June 2016 through September 2017.

MDHHS presented a Benefit Summary Inquiry (Exhibit A, pp. 1-5). Various FAP issuances and supplements from June 2016 through July 2017 were listed. The document sufficiently verified all issuances from the disputed benefit period.

FAP budgets from July 2017 and September 2017 were admitted (Exhibit B, pp. 5-8). The budgets verified various issuances to Petitioner.

MDHHS presented FAP worksheets (Exhibit A, pp. 20-32) from June 2016 through June 2017. Petitioner’s monthly FAP eligibility ranged from [REDACTED].

MDHHS factored Petitioner’s Retirement, Survivors and Disability Insurance (RSDI) to be \$[REDACTED]/month from June 2016 through December 2016. MDHHS factored Petitioner’s RSDI to be \$[REDACTED] from February 2017 through June 2017. Petitioner testimony conceded the amounts factored by MDHHS to be correct. The same amount of RSDI factored by MDHHS will be factored in the proceeding analysis.

Presented worksheets documented that MDHHS factored RSDI of \$[REDACTED]/month from June 2016 through August 2016 for Child2. The RSDI did not appear to be factored after August 2016. Petitioner did not allege the amounts to be improper. Given presented evidence, it will be found that MDHHS properly budgeted RSDI of \$[REDACTED] for Child1 from June 2016 through August 2016.

MDHHS presented a history of Petitioner’s child support income. The child support budgeted by MDHHS (noted below as “Budgeted”) and Petitioner’s actual child support as listed on presented documents (noted below as “Actual”) was as follows:

	Child1		Child2	
	Budgeted	Actual	Budgeted	Actual
June 2016	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
July 2016	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
August 2016	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
September 2016	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
October 2016	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
November 2016	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
December 2016	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
January 2017	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
February 2017	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
March 2017	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
April 2017	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
May 2017	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
June 2017	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
July 2017	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
August 2017	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
September 2017	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

To determine a running countable income, Petitioner's RSDI, Child2's RSDI, and child support for Child1 and Child2 are added. The amounts are as follows:

	<u>Budgeted</u>	<u>Actual</u>
June 2016	████████	████████
July 2016	████████	████████
August 2016	████████	████████
September 2016	██████	████████
October 2016	██████	████████
November 2016	██████	████████
December 2016	██████	████████
January 2017	██████	████████
February 2017	██████	████████
March 2017	██████	████████
April 2017	██████	████████
May 2017	██████	████████
June 2017	██████	████████
July 2017	██████	████████
August 2017	██████	████████
September 2017	██████	████████

[MDHHS] uses certain expenses to determine net income for FAP eligibility and benefit levels. BEM 554 (October 2015), p. 1. For groups without a senior (over 60 years old), disabled or disabled veteran (SDV) member, MDHHS considers the following expenses: child care, excess shelter (housing and utilities) up to a capped amount and court-ordered child support and arrearages paid to non-household members (see *Id.*). For groups containing SDV members, MDHHS also considers the medical expenses above \$██████ for each SDV group member(s) and an uncapped excess shelter expense. It was not disputed that Petitioner was disabled.

Verified countable medical expenses for SDV groups exceeding \$██████ child support, and day care expenses are subtracted from a client's monthly countable income. Petitioner did not allege child care or child support expenses. Petitioner did dispute medical expenses.

Petitioner's primary argument was that her daughter's medical expenses were submitted to MDHHS and ignored by MDHHS. The alleged medical expenses for Petitioner's daughter were not admitted as an exhibit, but were not needed.

Consider only the medical expenses of SDV persons in the eligible group or SDV persons disqualified for certain reasons; see Expenses for Disqualified or Ineligible Persons in this item. BEM 554 (January 2017), p. 8. [MDHHS is to] estimate an SDV person's medical expenses for the benefit period. *Id.*

Bridges uses certain expenses to determine net income for FAP eligibility and benefit levels. BEM 554 (January 2017) p. 1. For groups with one or more SDV member, Bridges uses the following...:

- Dependent care expense.
- Excess shelter.
- Court ordered child support and arrearages paid to non-household members.
- Medical expenses for the SDV member(s) that exceed \$35.

Id.

MDHHS policy clearly indicated that only the medical expenses of a SDV member may be factored in FAP eligibility. It was not disputed that Petitioner's daughter was neither a senior, disabled, nor a disabled veteran. Thus, MDHHS properly did not factor medical expenses for Petitioner's daughter.

Petitioner further alleged that MDHHS failed to factor her own medical expenses. Petitioner faxed a document listing various medical expenses. Most months did not include medical expenses exceeding \$█ though some did. Petitioner's medical expenses were not admitted as an exhibit because of Petitioner's procedural failing.

[MDHHS is to] verify reported changes in the source or amount of medical expenses if the change would result in an increase in benefits. *Id.*, p. 12. [MDHHS is to] not verify other factors, unless questionable. *Id.* Other factors include things like the allowability of the service or the eligibility of the person incurring the cost. *Id.*

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. BEM 105 (October 2016) p. 5. Changes [in income] must be reported within 10 days of receiving the first payment reflecting the change. p. 11. Other changes must be reported within 10 days after the client is aware of them. *Id.*, p. 12.

Petitioner testimony conceded that she did not submit proof of any medical expenses to MDHHS before the hearing. Petitioner's testimony was highly indicative of a failure to report expenses. MDHHS cannot be faulted for failing to budget unreported expenses.

It is possible that Petitioner verbally reported medical expenses to MDHHS. The possibility was supported by Petitioner's testimony that she often called her specialist and was often ignored. A verbal reporting of expenses by Petitioner debatably mandates MDHHS to request verification.

In disputes of a verbal reporting, evidence cannot typically verify whether a reporting occurred. Inferences can be made.

If a client continuously believed that MDHHS improperly factored reported medical expenses, then a client would be expected to reference the dispute when requesting a hearing. Neither of Petitioner's hearing requests specifically identified medical expenses as a disputed issue. This consideration supports finding that Petitioner did not report medical expenses to MDHHS.

It is curious that Petitioner's testimony insisted that she submitted proof of her daughter's medical expenses, yet acknowledged not submitting her own medical expenses. Submitting her daughter's medical expenses is indicative that Petitioner was aware of a need to report and submit medical expenses. Petitioner's testimony did not explain why she would have submitted only her daughter's medical expenses. Given Petitioner's various hearing statements implying mistrust of MDHHS, it is not appreciated why Petitioner would not have ensured verification of reporting her medical expenses. The most likely explanation for Petitioner's failure to submit medical expenses is that she did not report the expenses to MDHHS before MDHHS calculated Petitioner's eligibility for all disputed months.

It is found that Petitioner failed to report medical expenses to MDHHS before MDHHS calculated Petitioner's FAP eligibility. Petitioner's failure to report medical expenses justifies budgeting \$█ medical expenses. It should be noted that Petitioner can still submit proof of medical expense for consideration in future FAP eligibility.

MDHHS factored a standard deduction of \$█ for Petitioner's group from June 2016 through August 2016. A \$149 standard deduction was factored for September 2016. MDHHS policy from the time dictates a deduction of \$█ (see RFT 255 (July 2016) p. 1).

MDHHS factored a standard deduction of \$█ for Petitioner's group from October 2016 through September 2017. The deduction is proper (see RFT 255 (October 2016) p. 1) under MDHHS policy.

Subtracting a standard deduction from the running countable income results in the "adjusted gross income" (AGI). Using Petitioner's countable income and proper standard deduction, results in the following AGIs (dropping cents):

	AGI
June 2016	█
July 2016	█
August 2016	█
September 2016	█
October 2016	█
November 2016	█
December 2016	█
January 2017	█
February 2017	█
March 2017	█
April 2017	█
May 2017	█
June 2017	█
July 2017	█
August 2017	█
September 2017	█

From June 2016 through November 2016, MDHHS factored \$ [REDACTED] in housing costs for Petitioner. From December 2016 through September 2017, MDHHS factored \$ [REDACTED] in housing costs for Petitioner. Petitioner testimony conceded the amounts were correct.

For all months, MDHHS credited Petitioner with a heat/utility (h/u) standard. The h/u standard incorporates all utilities and is the maximum credit available. From June 2016 through September 2016 MDHHS factored a credit of \$ [REDACTED]. From October 2016 through September 2017, MDHHS factored \$ [REDACTED]. The amounts budgeted are consistent with RFT and a change in the credit beginning October 2016.

MDHHS only credits FAP benefit groups with an “excess shelter” expense. The excess shelter expense is calculated by subtracting half of Petitioner’s adjusted gross income from Petitioner’s total shelter obligation. Using actual budget amounts, MDHHS properly credited Petitioner’s excess shelter credit for all months.

The FAP benefit group’s net income is determined by taking the group’s adjusted gross income and subtracting the allowable excess shelter expense. Based on presented evidence, Petitioner’s excess shelter deduction, net income, proper FAP issuance, and previously issued FAP benefits (including supplement) are as follows:

	Exc Shlt.	Net Inc.	Proper FAP	Issued FAP
June 2016	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
July 2016	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
August 2016	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
September 2016	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
October 2016	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
November 2016	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
December 2016	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
January 2017	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
February 2017	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
March 2017	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
April 2017	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
May 2017	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
June 2017	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
July 2017	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
August 2017	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
September 2017	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	TOTAL FAP		[REDACTED]	[REDACTED]

From June 2016 through September 2017, Petitioner’s previously issued FAP benefits exceed the amount of FAP benefits that Petitioner was entitled to receive by \$ [REDACTED]. Thus, Petitioner is entitled to no further FAP benefits for the months from June 2016 through September 2017.


Consideration was given to evaluating Petitioner’s second hearing request as a dispute of FAP eligibility separate from the dispute of a supplement from June 2016 through June 2017. If Petitioner’s requests were interpreted separately, Petitioner’s FAP

eligibility from June 2016 and before would be irrelevant to Petitioner's FAP eligibility from July 2017 through September 2017. As it happens, MDHHS issued the same amount of FAP benefits to Petitioner for July 2017 through September 2017 that Petitioner was entitled to receive. Thus, Petitioner is also not entitled to receive further FAP benefits for the months from July 2017 through September 2017.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that Petitioner is entitled to no further FAP benefits for the months from June 2016 through September 2017 and that MDHHS complied with the administrative hearing order dated July 7, 2017. The actions taken by MDHHS are **AFFIRMED**.

CG/



Christian Gardocki
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

Counsel for Respondent

[REDACTED]
[REDACTED]

DHHS

[REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]

Counsel for Petitioner

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
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[REDACTED]
[REDACTED]