



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: October 16, 2017
MAHS Docket No.: 17-011955
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

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, a telephone hearing was held on October 11, 2017, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Richkelle Curney, Hearing Facilitator.

ISSUE

Did the Department properly calculate Petitioner's Food Assistance Program (FAP) benefit amount?

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. On [REDACTED], 2017, Petitioner applied for State Emergency Relief (SER) benefits. Along with the application, Petitioner submitted pay statements for her income from employment (Exhibit A).
3. As a result of the information received pursuant to the SER application, the Department recalculated Petitioner's FAP benefits and determined her benefit amount would be \$6 per month effective September 1, 2017, ongoing. Petitioner was notified of the change in the Notice of Case Action that was sent on August 10, 2017 (Exhibit B).

4. Petitioner was a member of a FAP group of four that consisted of herself and her three children.
5. Petitioner received monthly child support payments for one of her children (Exhibit D).
6. Petitioner owned her home and had a verified monthly housing expense of \$590 (Exhibit A).
7. Petitioner submitted a request for hearing on September 7, 2017, disputing the Department's calculation of her FAP benefit amount.

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, the Department received an application submitted by Petitioner on [REDACTED], 2017, requesting SER benefits. Along with the application, Petitioner submitted pay statements from July 7, 2017, in the amount of \$1,266.61 and July 21, 2017, in the amount of \$1,264.62. Petitioner also submitted a receipt showing she made a monthly mortgage payment of \$590. As a result of the information received, the Department recalculated Petitioner's FAP benefits.

All countable earned and unearned income available to the client must be considered in determining a client's eligibility for program benefits. 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. An employee's wages

include salaries, tips, commissions, bonuses, severance pay and flexible benefit funds not used to purchase insurance. BEM 501 (July 2017), p. 6. The Department counts gross wages in the calculation of earned income. BEM 501, p. 7.

The Department determined Petitioner's monthly gross income from employment was \$2,721. Petitioner was paid biweekly. When the amounts from Petitioner's pay statements are averaged and multiplied by the 2.15 multiplier, it results in a standard monthly amount of \$2,721. Therefore, the Department correctly determined Petitioner's monthly gross earned income.

The Department testified Petitioner receives monthly child support payments for one of her children. The Department included \$130 of unearned income in the budget when calculating Petitioner's benefit amount. (Exhibit C). When calculating child support income, the Department uses the monthly average of the child support payments received in the past three calendar months, unless changes are expected. BEM 505, p. 4. If there are known changes that will affect the amount of the payments in the future, the Department will not use the previous three months. BEM 505, p. 4. If the past three months' child support is not a good indicator of future payments, the Department will calculate an expected monthly amount for the benefit month based on available information and discussion with the client. BEM 505, p. 5. The Department presented evidence that Petitioner received \$195 in child support payments for each of the months of May, June and July 2017. Petitioner confirmed the amount was correct and that it does not vary. Therefore, the Department failed to correctly calculate Petitioner's unearned income, as Petitioner's average child support income would be \$195 per month. As the unearned income amount was incorrect, it follows that the Department's total gross income amount is also incorrect.

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 (January 2017), 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.

Petitioner's FAP benefit group size of four justifies a standard deduction of \$162. RFT 255 (October 2016), p. 1. The Department will reduce the gross countable earned income by 20% and is known as the earned income deduction. BEM 550 (January 2017), p.1. The Department properly concluded Petitioner was entitled to an earned income deduction of \$545. There was no evidence presented that Petitioner had any out-of-pocket dependent care or child support expenses. Therefore, the budget properly excluded any deduction for dependent care or child support expenses.

In calculating the excess shelter deduction of \$0, the Department testified that it only considered that Petitioner was responsible for utility expenses, entitling her to the heat/utility standard of \$526. BEM 554, pp. 14-15. The Department testified when calculating Petitioner's excess shelter amount, they added the total shelter amount and subtracted 50% of the adjusted gross income, which resulted in a deficit. Therefore, the Department determined Petitioner was not entitled to an excess shelter deduction. However, Petitioner submitted a receipt of her monthly mortgage payment in the amount of \$590. The Department testified the information was entered into their system but could not explain why it was not included in the budget. Additionally, the Department failed to properly determine Petitioner's adjusted gross income, as the unearned income amount was incorrect. Thus, the Department did not correctly determine the excess shelter deduction.

As the Department did not properly calculate Petitioner's adjusted gross income or excess shelter deduction, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it calculated Petitioner's FAP benefit amount.

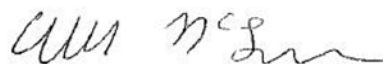
DECISION AND ORDER

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it calculated Petitioner's FAP benefit amount.

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 eligibility as of September 1, 2017, ongoing;
2. If Petitioner is eligible for FAP benefits, issue supplements to Petitioner for any FAP benefits she was eligible to receive but did not from September 1, 2017, ongoing; and
3. Notify Petitioner of its FAP decision in writing.



EM/jaf

Ellen McLemore
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.

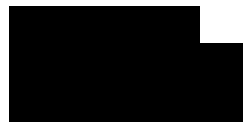
If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

MDHHS-Wayne-17-Hearings

Petitioner



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