



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: October 26, 2017
MAHS Docket No.: 17-012401
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 25, 2017, from Detroit, Michigan. The Petitioner was represented by her husband, and group member, [REDACTED]. The Department of Health and Human Services (Department) was represented by Melisa Johnstone, Family Independence Manager.

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. On June 20, 2017, the Department sent Petitioner a Notice of Case Action informing her that her application for FAP benefits was approved and that she would receive \$301 in FAP benefits per month effective July 1, 2017, ongoing.
2. Petitioner was a member of a group that included herself, her husband and her four children.
3. Petitioner owned a business and had income as a result of the business (Exhibit C).
4. Petitioner also had unearned income in the form of Retirement, Survivors, and Disability Insurance (RSDI) benefits (Exhibit D).

5. On September 9, 2017, the Department sent Petitioner a Notice of Case Action informing Petitioner that her FAP benefits were being decreased to \$296 per month effective October 1, 2017, ongoing, due to a change in policy.
6. On September 20, 2017, Petitioner's husband, and group member, submitted a 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 this case, Petitioner's husband requested a hearing not to dispute the reduction in benefits as a result of a policy update effective October 1, 2017, but because he believed the Department miscalculated Petitioner's income from the business that she owned, and therefore, miscalculated the FAP benefit issuance amount. A request for a hearing must be submitted within 90 days from the date of the written notice of case action. BAM 600 (April 2017), p. 6. However, an exception applies to FAP cases and a request for a hearing disputing the current level of benefits may be made any time within the benefit period. BAM 600, p. 7. "Current" is interpreted to refer to the client's eligibility as of the hearing request month. Petitioner's husband's hearing request was not timely submitted to address the Department's June 20, 2017 Notice of Case Action when the Department first determined the group's FAP benefit amount. Based on Petitioner's husband's hearing request submission of September 20, 2017, he may dispute September 2017 FAP eligibility ongoing.

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. A standard monthly amount must be determined for each income source. BEM 505, p. 8. For irregular income, such as self-employment income, the Department will determine the standard monthly amount by adding the amounts entered together and dividing by the number of months used. BEM 505, p. 9.

The amount of self-employment income before any deductions is called total proceeds. BEM 502 (January 2017), p. 3. Countable income from self-employment equals the total proceeds minus allowable expenses of producing the income. BEM 502, p. 3. Allowable expenses are the higher of 25 percent of the total proceeds, or actual expenses if the client chooses to claim and verify the expenses. BEM 502, p. 3. Allowable self-employment expenses include: (i) identifiable expenses of labor, stock, raw material, seed, fertilizer, etc.; (ii) interest and principal on loans for equipment, real estate or income-producing property; (iii) insurance premiums on loans for equipment, real estate and other income-producing property; (iv) taxes paid on income-producing property; (v) transportation costs while on the job; (vi) purchase of capital equipment; (vii) a child care provider's cost of meals for children. Do not allow costs for the provider's own children; and (viii) any other identifiable expense of producing self-employment income with the exception of the expenses that are specifically not allowed. BEM 502, pp. 3-4. Self-employment expenses that are not allowed include: (i) a net loss from a previous period; (ii) federal, state and local income taxes; (iii) personal entertainment or other individual business expenses; (iv) money set aside for retirement; and (v) depreciation on equipment, real estate or other capital investments. BEM 502, p. 4.

The Department presented Petitioner's Schedule C form for Petitioner's business from 2016 (Exhibit C, pp. 1-2) and Petitioner's individual income tax return from 2016 (Exhibit C, pp. 3-4), which it used to determine Petitioner's income from self-employment. When calculating Petitioner's self-employment income, the Department testified it took the business' total proceeds (\$52,518) and deducted 25 percent. The Department divided that figure by 12, which resulted in a standard monthly amount of \$3,282.

The Schedule C presented by the Department clearly indicates Petitioner's business is a Limited Liability Company (LLC). S-Corporations and LLCs are not self-employment. BEM 502, p. 1. Therefore, the Department incorrectly calculated Petitioner's income as self-employment income. Additionally, the Department presented Petitioner's personal tax return, which indicated Petitioner's income was far less than the figure calculated by the Department. Therefore, the Department failed to establish that it properly followed policy when determining Petitioner's income. As Petitioner's income was not properly calculated, it follows Petitioner's FAP benefit issuance amount was also incorrect.

DECISION AND ORDER

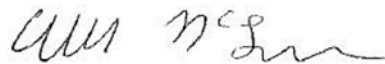
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it calculated Petitioner's FAP benefit issuance 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. Redetermine Petitioner's FAP eligibility as of September 1, 2017, ongoing;
2. If Petitioner is eligible for additional FAP benefits, issue supplements to Petitioner for any FAP benefits she was eligible to receive but did not as of September 1, 2017, ongoing; and
3. Notify Petitioner of its FAP decision in writing.



EM/

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.

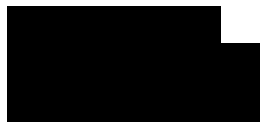
If submitted by mail, the written request must be addressed as follows:

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

DHHS

MDHHS-Jackson-Hearings

Petitioner



BSC4
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