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GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: November 7, 2017
MAHS Docket No.: 17-012740
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, a telephone hearing was held on October 31, 2017 from Detroit, Michigan. The Petitioner appeared for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by Valarie Foley, Hearing Facilitator.

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 \$215.
2. On or around September 19, 2017 Petitioner submitted updated verification of her paystubs. Petitioner is employed and is paid weekly. (Exhibit A, pp. 14-18)
3. On September 25, 2017 the Department sent Petitioner a Notice of Case Action advising her that effective November 1, 2017, her FAP benefits would be decreased to \$17 monthly for her household size of two. (Exhibit A, pp. 4-7)
4. On September 25, 2017 Petitioner submitted a hearing request disputing the decrease in her FAP benefits.

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 decrease in her FAP benefits to \$17 effective November 1, 2017, after the processing of her updated paystubs. 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 A, pp. 11-13).

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 (July 2017), 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 (October 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 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. The Department counts gross wages in the calculation of earned income. BEM 501 (July 2017), pp. 6-7.

According to the budget provided, the Department concluded that Petitioner had earned income in the amount of \$1,575 which consisted of her weekly earnings from employment. Specifically, the Department stated that it relied on the paystubs provided and considered: \$396 paid on August 4, 2017; \$396 paid on August 11, 2017; \$396 paid on August 18, 2017; \$343.10 paid on September 1, 2017; and determined that the missing check stub for the pay date of August 25, 2017 was \$300.80. Petitioner confirmed that the income amounts relied upon were correct and the paystubs were presented during the hearing. Upon review and in consideration of the prospective budgeting policy, the Department properly calculated Petitioner's earned income.

The Department concluded that Petitioner had unearned income in the amount of \$191, the source of which the Department initially could not identify. However, later in the hearing, the Department indicated that the unearned income consisted of Petitioner's receipt of child support benefits on behalf of one child. Child support is money paid by an absent parent(s) for the living expenses of children and is considered unearned income. BEM 503, pp. 6-10. The total amount of court-ordered direct support (which is support an individual receives directly from the absent parent or the Michigan State Disbursement Unit (MiSDU)) is counted as unearned income and is considered in the calculation of a client's gross unearned income. When prospectively budgeting unearned income from child support, the Department is to use the average of child support payments received in the past three calendar months, unless changes are expected, excluding any unusual amounts or those not expected to continue. BEM 505, pp. 3-5.

Although the Department presented a child support search in support of its calculation, the figures included on the child support search, when averaged, do not total \$191. Additionally, the Department could not identify the exact months or amounts of child support income that it considered when determining Petitioner's FAP eligibility for November 2017. While Petitioner did not dispute that she received support on behalf of one child, Petitioner maintained that the monthly support is inconsistent and the amounts reflected on the child support search are not accurate. Upon further review, the Department failed to establish that Petitioner had unearned income of \$191.

The deductions to income on the net income budget were also reviewed. There was no evidence presented that Petitioner's FAP group includes a senior/disabled/veteran (SDV) 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 (August 2017), p. 1; BEM 556 (July 2013), p. 3.

In this case, the Department properly calculated the earned income deduction of \$315 and applied a dependent care deduction of \$85. Petitioner confirmed that she is no longer responsible for child support expenses, thus, the budget properly removed the previously included child support expense. Based on Petitioner's confirmed two person group size, the Department properly applied a \$160 standard deduction. In calculating the excess shelter deduction of \$90, the Department properly considered Petitioner's confirmed monthly rent of \$156 and the \$537 heat and utility standard.

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 because of the errors in

the calculation of unearned income, the Department did not act in accordance with Department policy when it calculated Petitioner's FAP benefits for November 1, 2017, ongoing.

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 November 1, 2017, ongoing;
2. Issue FAP supplements to Petitioner from November 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 decision.

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-Wayne-19-Hearings
BSC4 Hearing Decisions
D. Sweeney
M. Holden
MAHS

Petitioner – Via First-Class Mail:

