



RICK SNYDER
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.: 17-013026
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 November 2, 2017, from Detroit, Michigan. The Petitioner was represented by his wife, [REDACTED]. The Department of Health and Human Services (Department) was represented by Haysem Hosny, 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 is an ongoing recipient of FAP benefits.
2. On August 30, 2017 the Department sent Petitioner a Notice of Case Action advising him that effective August 1, 2017 his group was approved for FAP benefits in the amount of \$126.00. (Exhibit A, 4-6)
3. On September 29, 2017 Petitioner's wife requested a hearing disputing the decrease in her group's FAP benefits effective August 1, 2017.

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 wife requested a hearing disputing the decrease in her FAP benefits to \$126, effective August 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 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 (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 (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. The Department counts gross wages in the calculation of earned income. BEM 501 (July 2017), pp. 6-7.

Initially, the FAP EDG Net Income Results budget was not presented to the undersigned Administrative Law Judge (ALJ) for review but the Department retrieved the budget from the computer and provided testimony regarding the figures found on the budget and the information relied upon by the Department. Following the closure of the record, the Department faxed the undersigned ALJ a copy of what was to have been the budget reviewed during the hearing and admitted as Exhibit B.

According to the budget provided for the August 2017 benefit period, the Department concluded that Petitioner's group had earned income of \$1,185, which consisted of Petitioner's weekly earning, as well as, biweekly earnings for Petitioner's daughter. The Department could not identify the income amounts relied upon however and could not otherwise establish that Petitioner's household had earned income of \$1,185, as the Department's testimony regarding the earned income was inconsistent with the documents presented for review. Thus, it was unclear how the Department calculated Petitioner's earned income and there was no explanation provided by the Department regarding the discrepancies presented. Therefore, the Department failed to establish that it properly calculated Petitioner's earned income.

With respect to unearned income, the Department concluded that Petitioner's group had unearned income in the amount of \$1,001. Although the Department could not explain its unearned income calculation, Petitioner's wife testified that she receives unemployment compensation benefits in the biweekly amount of \$466. Upon review, the Department properly determined that Petitioner's household had unearned income of \$1,001.

The deductions to income on the net income budget were also reviewed. BEM 550 (January 2017), pp. 1-2; BEM 554 (August 2017), p. 1; BEM 556 (July 2013), p. 3. Because the earned income was not properly determined, it follows that the earned income deduction calculated by the Department was also incorrect. Petitioner confirmed that the Department applied the correct amount for her housing expenses and the Department properly applied the \$526 heat and utility standard.

The only additional dispute appeared to be with respect to the household size. The Department testified that Petitioner's group size was reduced because two of Petitioner's children were ineligible for FAP benefits based on their status as students.

A person who is in student status and does not meet the criteria in BEM 245 is a non-group member and is not eligible to receive FAP benefits. BEM 212 (January 2017), p. 9. A person enrolled in a post-secondary education program may be in student status and eligible for FAP assistance, provided that certain eligibility criteria are met. BEM 245 (October 2017), pp. 3-5.

Although the Department testified that only two of Petitioner's children were ineligible for FAP benefits based on their student status and a third was included in the household, the Department could not sufficiently explain who was ineligible and for which months. It was unclear when the children were removed from the group and the Department did not establish that the two ineligible children did not meet the criteria found in BEM 245. Therefore, the Department failed to establish that Petitioner's household size was three for the August 2017 benefit period.

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 the amount of Petitioner's FAP benefits.

Petitioner's wife raised additional concerns at the hearing regarding the closure of her FAP case effective November 1, 2017. Petitioner's wife was informed that because she was notified of the case closure on October 9, 2017, after her current request for hearing was filed, she was required to submit a new hearing request if she sought to dispute the case closure, as it is determined to be a subsequent negative action. See BAM 600 (April 2017).

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 August 1, 2017, ongoing;
2. If Petitioner is eligible for FAP benefits, issue FAP supplements to Petitioner from August 1, 2017, ongoing, for any FAP benefits he 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-Macomb-36-Hearings
BSC4 Hearing Decisions
M. Holden
D. Sweeney
MAHS

Petitioner – Via First-Class Mail:

