



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

Date Mailed: February 23, 2018
MAHS Docket No.: 17-016510
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 February 21, 2018, from Detroit, Michigan. Petitioner was represented by [REDACTED]. Petitioner was not present. The Department of Health and Human Services (Department) was represented by Daniel Beaton, Assistant Attorney General; Farah Erickson, Family Independence Manager; Connie Cvengros, Eligibility Specialist; and [REDACTED] Indian Outreach Worker.

ISSUE

Did the Department properly determine 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 submitted an application for FAP benefits on [REDACTED], 2017.
2. Petitioner was the only member of his FAP group.
3. Petitioner had income from employment at the time of application.
4. Petitioner received unearned income in the form of Retirement, Survivors, and Disability Insurance (RSDI) and tribal gaming revenue.
5. Petitioner was responsible for a Medicare Part B premium of \$134 per month.

6. On September 15, 2017, the Department sent Petitioner a Notice of Case Action informing Petitioner he was entitled to \$0 in FAP benefits for August 2017; \$16 in FAP benefits for September 2017; and \$15 in FAP benefits for October 1, 2017, ongoing.
7. In November 2017, Petitioner lost his employment. The Department did not change Petitioner's FAP benefit amount.
8. On December 8, 2017, Petitioner submitted a request for hearing disputing the Department's calculation of his FAP benefits for September, ongoing.

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 submitted three hearing requests disputing the Department's calculation of his FAP benefits for September, ongoing; October, ongoing; and November, ongoing (Exhibit A, pp. 4-9). Petitioner submitted an application for FAP benefits on [REDACTED], 2017. On September 15, 2017, the Department sent Petitioner a Notice of Case Action informing Petitioner he was entitled to \$0 in FAP benefits for August 2017; \$16 in FAP benefits for September 2017; and \$15 in FAP benefits for October 1, 2017, ongoing.

September 2017

For September 1, 2017, ongoing, the Department presented a budget that was used in calculating Petitioner's FAP benefits (Exhibit A, pp. 135-137). 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 biweekly is converted to a standard amount by multiplying the average of the biweekly pay amounts by the 2.15 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 2016), pp. 6-7.

According to the budget provided, Petitioner's unearned income was calculated to be \$982. The Department testified that it used the employment verification it received from Petitioner's employer (Exhibit A, pp. 37). The employment verification shows Petitioner was issued \$301.50 on August 4, 2017; \$231.75 on August 11, 2017; \$247.50 on August 18, 2017; and \$132.75 on August 25, 2017. Petitioner was paid on a weekly basis. When averaging the payments Petitioner received in August 2017 and multiplying by the 4.3 multiplier, the result is a standard monthly amount of \$982. Therefore, the Department properly calculated Petitioner's income from employment.

The Department determined Petitioner received \$1066 in unearned income per month. The Department presented Petitioner's checking account statement which showed he received monthly deposits in the amount of \$148 and \$752, both of which were RSDI benefits. Petitioner was not present to dispute the amount of RSDI benefits that he received. Petitioner's representative did not dispute the amount of RSDI benefits that were received.

Individuals may receive income from tribal gaming profits including casino profit sharing. BEM 503, p. 4. The Department counts as unearned income all payments made to American Indians from gaming revenues. BEM 503, p. 4. Bridges does not exclude any part of these payments. BEM 503, p. 4. The Department excludes certain payments made to Native Americans under certain laws as income and assets. BEM 503, p. 46. Policy sets forth which payments are excluded. BEM 503, pp. 46-47.

The Department also presented documentation showing Petitioner received a quarterly payment in the amount of \$500 as member [REDACTED] (Exhibit A, p. 96). The Department calculated the monthly amount to be \$166. The Department testified it considered the payment as gaming revenue. Petitioner's representative did not dispute the income designation as gaming revenue. Therefore, the Department properly considered the income as unearned income. The Department properly calculated Petitioner's unearned income as \$1066 per month.

The deductions to income on the net income budget were also reviewed. There was evidence presented that the Petitioner's group includes a senior/disabled/veteran (SDV). BEM 550. 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.
- Medical deduction.

BEM 554; BEM 556

The Department will reduce the gross countable earned income by 20 percent and is known as the earned income deduction. BEM 550 (January 2017), p.1. The Department correctly determined Petitioner is entitled to an earned income deduction of \$197. Petitioner's FAP benefit group size of one justified a standard deduction of \$151. RFT 255 (October 2016), p. 1. 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.

As Petitioner qualifies as an SDV member, the group is entitled to deductions for verifiable medical expenses that the SDV member incurs in excess of \$35. BEM 554, p. 1. The Department testified that Petitioner was responsible for his Medicare Part B premiums, which was \$134 per month. The Department testified Petitioner has not submitted any other verified medical expenses. Therefore, the Department properly determined Petitioner was entitled to a \$99 medical expense deduction.

In calculating the excess shelter deduction of \$0, the Department stated that it considered Petitioner's verified housing expense of \$0 and that he was entitled 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 correctly determined Petitioner was not entitled to an excess shelter deduction.

The FAP benefit group's net income is determined by taking the group's adjusted gross income and subtracting the allowable excess shelter expense. After subtracting the allowable deductions, the Department properly determined Petitioner's adjusted gross income to be \$1601. As Petitioner was not entitled to an excess shelter deduction, his net income is also \$1601. A chart listed in RFT 260 is used to determine the proper FAP benefit issuance based on the net income and group size. Based on Petitioner's net income and group size, the Department properly determined Petitioner was entitled to a \$16 FAP benefit amount for September 2017.

October 2017

The Department presented a FAP budget for October 2017. The Department testified that the only figures that changed between September 2017 and October 2017 were those based on a policy update, such as the standard deduction, the heat and utility standard and the FAP benefit issuance amounts. As stated above, all of the other figures were correct. Based on the budget provided and the updated policy, the Department correctly determined Petitioner was entitled to \$15 per month in FAP

benefits for October 2017. RFT 255 (October 2017), p. 1; RFT 260 (October 2017), p. 21.

November 2017

The Department presented a budget for November 2017. The Department testified that Petitioner reported a loss of employment on November 7, 2017. However, the loss of employment did not affect his benefit issuance amount. Petitioner provided his final pay statement with a final pay date of November 3, 2017, in the amount of \$29.25. The Department removed the continuing income from the budget but did include the \$29 of earned income in the November budget, as Petitioner did receive the final payment in November 2017. Therefore, the Department properly calculated Petitioner's earned income for November 2017.

The Department testified that Petitioner's unearned income remained the same, with the exception in an increase to one of his RSDI payments. Petitioner previously received a monthly RSDI payment of \$148 but it increased to \$162 per month. Petitioner's representative did not dispute the calculation of earned income. As such, the Department properly determined Petitioner's unearned income was \$1080 per month.

The deductions to income on the net income budget were also reviewed. There was evidence presented that the Petitioner's group includes a senior/disabled/veteran (SDV). BEM 550. 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.
- Medical deduction.

BEM 554; BEM 556

The Department will reduce the gross countable earned income by 20 percent and is known as the earned income deduction. BEM 550 (January 2017), p.1. The Department correctly determined Petitioner is entitled to an earned income deduction of \$6. Petitioner's FAP benefit group size of one justifies a standard deduction of \$160. RFT 255 (October 2017), p. 1. 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.

As Petitioner qualifies as an SDV member, the group is entitled to deductions for verifiable medical expenses that the SDV member incurs in excess of \$35. BEM 554, p. 1. The Department testified that Petitioner was responsible for his Medicare Part B premiums, which was \$134 per month. The Department testified Petitioner has not submitted any other verified medical expenses. Therefore, the Department properly determined Petitioner was entitled to a \$99 medical expense deduction.

In calculating the excess shelter deduction of \$115, the Department stated that it considered Petitioner's verified housing expense of \$0 and that he was entitled to the heat/utility standard of \$537. 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 an excess shelter deduction of \$115.

The FAP benefit group's net income is determined by taking the group's adjusted gross income and subtracting the allowable excess shelter expense. After subtracting the allowable deductions, the Department properly determined Petitioner's adjusted gross income to be \$844. After subtracting the excess shelter deduction, the Department properly determined Petitioner's net income was \$729. A chart listed in RFT 260 is used to determine the proper FAP benefit issuance based on the net income and group size. Based on Petitioner's net income and group size, the Department properly determined Petitioner was entitled to a \$15 FAP benefit amount for November 2017.

December 2017, ongoing

According to the budget for December 2017, the Department completely removed the earned income from employment (Exhibit A, pp. 144-146). Petitioner's sole income was the \$1080 in unearned income, which as stated above, was correctly calculated.

The deductions to income on the net income budget were also reviewed for December 2017, ongoing. There was evidence presented that the Petitioner's group includes a senior/disabled/veteran (SDV). BEM 550. 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.
- Medical deduction.

BEM 554; BEM 556

The Department will reduce the gross countable earned income by 20 percent and is known as the earned income deduction. BEM 550 (January 2017), p.1. As Petitioner no longer had earned income, he was not entitled to the earned income disregard. Petitioner's FAP benefit group size of one justifies a standard deduction of \$160. RFT 255 (October 2017), p. 1. 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.

As Petitioner qualifies as an SDV member, the group is entitled to deductions for verifiable medical expenses that the SDV member incurs in excess of \$35. BEM 554, p.

1. The Department testified that Petitioner was responsible for his Medicare Part B premiums, which was \$134 per month. The Department testified Petitioner has not submitted any other verified medical expenses. Therefore, the Department properly determined Petitioner was entitled to a \$99 medical expense deduction.

In calculating the excess shelter deduction of \$77, the Department stated that it considered Petitioner's verified housing expense of \$0 and that he was entitled to the heat/utility standard of \$537. 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 an excess shelter deduction of \$77.

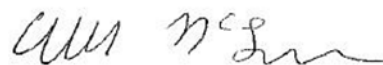
The FAP benefit group's net income is determined by taking the group's adjusted gross income and subtracting the allowable excess shelter expense. After subtracting the allowable deductions, the Department properly determined Petitioner's adjusted gross income to be \$920. After subtracting the excess shelter deduction, the Department properly determined Petitioner's net income was \$843. A chart listed in RFT 260 is used to determine the proper FAP benefit issuance based on the net income and group size. Based on Petitioner's net income and group size, the Department properly determined Petitioner was entitled to a \$15 FAP benefit amount for November 2017.

Although Petitioner's income fluctuated between October 2017 and December 2017, the Department correctly determined Petitioner was only entitled to a \$15 per month FAP issuance amount based on his circumstances during the entire period. As such, the Department acted in accordance with policy when it determined Petitioner was entitled to a \$16 per month FAP benefit amount for September 2017 and \$15 per month for October 1, 2017, ongoing.

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 acted in accordance with Department policy when it determined Petitioner's FAP benefit amount. Accordingly, the Department's decision is **AFFIRMED**.

EM/cg



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

**Counsel for Respondent
Via Email:**

Department of Attorney General
Attn: AAG's Beaton and Boone
MDHHS- Gogebic-Hearings
M. Holden
D. Sweeney
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**Petitioner:
Via First-Class Mail**



**Counsel for Petitioner:
Via First-Class Mail**

