



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

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Date Mailed: January 25, 2018  
MAHS Docket No.: 17-015963  
Agency No.: ██████████  
Petitioner: ██████████

**ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler**

**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 January 18, 2018, from Detroit, Michigan. The Petitioner was self-represented and appeared with her mother, ██████████ as a witness. The Department of Health and Human Services (Department) was represented by ██████████ Hearing Facilitator.

**ISSUE**

Did the Department properly calculate Petitioner's Food Assistance Program (FAP) benefit rate from December 2017 ongoing?

**FINDINGS OF FACT**

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. In July of 2017, Petitioner applied for FAP benefits.
2. In July 2017, Petitioner was issued a prorated FAP benefit of \$██████
3. In August and September, Petitioner was issued a FAP benefit of \$██████ based upon a group size of three.
4. In October and November of 2017, Petitioner was issued FAP benefits in the amount of \$██████ based upon a group size of three.

5. On November 16, 2017, the Department sent a Notice of Case Action to Petitioner indicating that her benefit rate from December 2017 through June 2018 would be \$ [REDACTED] for a group size of three as a result of her net unearned income.
6. On December 6, 2017, Petitioner submitted a hearing request disputing the Department's calculation of her FAP benefit rate.

### **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 Petitioner's benefit rate changed twice between August 2017 and December 2017. A review of the evidence presented including the budget provided for August 2017, testimony, Non-Cooperation Summary, Individual Income Results for each group member, and the Notice of Case Action from November 16, 2017, show that the reason for the fluctuation of Petitioner's benefits is the application of a sanction for Family Independence Program (FIP) related noncompliance. For reasons unknown to the Hearing Facilitator, the sanction was applied in August and September, removed in October and November, then reapplied for December ongoing until the sanction penalty limit was reached.

Noncompliance without good cause, with employment requirements for FIP may affect FAP if both programs were active on the date of the FIP noncompliance. BEM 233B (July 2013), p. 1. A FAP group member is disqualified for noncompliance when all of the following exists:

- The client was active both FIP and FAP on the date of FIP noncompliance.
- The client did not comply with FIP employment requirements.
- The client is subject to a penalty on the FIP program.
- The client is not deferred from FAP work requirements.
- The client did not have good cause for noncompliance.

BEM 233B, p. 3. If the client meets all of the requirements outlined above, the last FIP grant amount is budgeted into the FAP budget and only removed at the end of the FIP

penalty period. BEM 233B, p. 3. For individuals serving a lifetime sanction, the FIP income is removed from the FAP budget once the individual reaches their FIP lifetime time limit. BEM 233B, p. 3.

The date of FIP noncompliance or noncooperation as it relates to this case was September 26, 2012. After a review of all of the evidence presented, the Department has not shown that Petitioner was a recipient of **both** FAP and FIP on the date of her noncooperation in 2012. It should be noted that no explanation was provided as to why the Department applied the FIP related sanction in August, September, and December but not in October and November of 2017. This suggests that there may have been an error in the application or non-application of the sanction, but it is impossible to determine when the error occurred. Since the Department did not establish whether Petitioner received **both** FIP and FAP at the time of noncompliance, the Department has not shown that the FIP-related sanction, more specifically the inclusion of the last FIP grant in the calculation of Petitioner's FAP benefits, was applicable in this case. Therefore, the Department has not shown that the Petitioner's FAP budgets from December 2017 ongoing were calculated in accordance with policy.

The Department did not argue nor issue a Notice of Case Action for the disqualification of Petitioner from the FAP group; therefore, that issue is not addressed here. If Petitioner was not a recipient of both FIP and FAP, a disqualification from FAP would not be applicable for FIP noncompliance. BEM 233B, pp. 2-3.

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 rate from December 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. Remove the FIP-related FAP sanction;
2. Recalculate Petitioner's FAP benefits from December 2017 ongoing; and
3. If Petitioner is eligible for a FAP supplement, issue a supplement in the amount she is eligible to receive but did not in accordance with Department policy; and

4. Notify Petitioner in writing of its decision.



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**Amanda M. T. Marler**  
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**

[REDACTED]

**Petitioner**

[REDACTED]

[REDACTED]

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