



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: January 25, 2018
MAHS Docket No.: 17-016130
Agency No.: [REDACTED]
Petitioner: [REDACTED]

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 his interpreter [REDACTED]. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearing Facilitator.

ISSUE

Did the Department properly calculate Petitioner's Food Assistance Program (FAP) benefit rate from October 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. On September 5, 2017, Petitioner submitted an application for FAP benefits.
2. Petitioner has a group size of four.
3. On October 13, 2017, the Department issued a Notice of Case Action denying Petitioner's application for FAP benefits because bank statements had not be received for one of Petitioner's banks.
4. On October 16, 2017, the Department received the missing bank statements and because the bank statements were received more than 30 days after the date of application, treated Petitioner's application as having been received on October 16, 2017.

5. On the same day, Petitioner submitted his first hearing request disputing his FAP benefit rate.
6. On October 26, 2017, the Department issued a Notice of Case Action granting \$█ in FAP benefits as a prorated amount for October 2017 and \$█ in FAP benefits for November 2017 ongoing.
7. On October 27, 2017, someone from the Department convinced Petitioner's wife to withdraw Petitioner's October 16, 2017 request for hearing while Petitioner was at work.
8. On December 13, 2017, Petitioner submitted a new hearing request disputing the Department's calculation of his 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.

First and foremost, a withdrawal of a hearing request can only be made by the client who requested the hearing or that client's authorized hearing representative. BAM 600 (October 2017), p. 28. Neither party presented any evidence that Petitioner's wife was his authorized hearing representative. Furthermore, the Department did not provide the original hearing request or the withdrawal of that hearing request for the hearing on January 18, 2017. Instead, the Department only included the hearing requested submitted by Petitioner in December 2017. There is no evidence that there was a withdrawal of hearing request in accordance with Department policy. Regardless of the withdrawn request, Petitioner's hearing request from December 2017 was submitted within 90 days of the October 13, 2017 Notice of Case Action; therefore, it is still considered timely. BAM 600, p. 6.

Moving to the second issue, the Hearing Facilitator testified at the start of the hearing that the Department erred in several ways while calculating Petitioner's FAP benefits. She testified that the calculation of benefits was improper because the case worker had used the wrong circumstance start and end dates for income, that a house payment should not have been budgeted because the Department only had an estimate of the

payment provided at the time of closing and not the actual payment or bill, and that Petitioner's overtime income had been improperly considered.

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), p. 1. 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. 5-7. A standard monthly amount must be determined for each income source used in the budget. BEM 505, pp. 8-9. Income received twice per month is added together. BEM 505, p. 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.

Deductions from income may include

- Dependent care expense.
- Excess shelter.
- Court ordered child support and arrearages paid to non-household members.
- Standard deduction based on group size.
- Medical deduction.
- An earned income deduction equal to 20% of any earned income.

BEM 554 (August 2017), p. 1; BEM 556 (July 2013), p. 3. Shelter expenses are allowed when billed but do not have to be paid to be allowed. BEM 554, p. 13.

The Department has conceded that the Petitioner's FAP budget was not properly calculated with respect to Petitioner's income and housing expense; therefore, no further analysis is needed. 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 Petitioner's FAP benefit rate.

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 benefit rate from September 2017 ongoing;
2. If Petitioner is eligible for additional FAP benefits after recalculation, issue any supplements for benefits not previously received in accordance with Department policy; and
3. Notify the Petitioner in writing of its decision.



AM/

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]

[REDACTED]

[REDACTED]

[REDACTED]

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