



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: March 5, 2018  
MAHS Docket No.: 18-000818  
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 February 28, 2018, from Detroit, Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by ██████████, Assistance Payments Worker.

**ISSUE**

Did the Department properly calculate Petitioner's Food Assistance Program (FAP) benefit?

**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 December 29, 2017, Petitioner submitted an online application for FAP benefits.
2. On the application, Petitioner indicated that she was employed by ██████████ as of November 18, 2017, but that she had also started a strike on the same day and was paid \$ ██████████ per week, then listed that she was also self-employed as of the same day as a Manicurist earning \$ ██████████ per month.
3. On January 8, 2018, Petitioner completed an in-person interview during which she advised the case worker that she was not self-employed, that she filed a 1040 Form annually for taxes, and she has a weekly paycheck and schedule provided by ██████████.

4. On January 8, 2018, the Department issued a Notice of Case Action approving Petitioner for FAP benefits for \$ [REDACTED] for the month of January 2018 and \$ [REDACTED] for February 2018 ongoing; the Notice of Case Action further states that earned income of \$ [REDACTED] self-employment income of \$ [REDACTED] and unearned income of \$ [REDACTED] were considered in calculating Petitioner's FAP benefit rate.
5. On January 15, 2018, Petitioner started a series of emails with a case worker seeking clarification of the information in the Notice of Case Action.
6. On January 19, 2018, Petitioner filed her request for hearing disputing the 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 Department issued a Notice of Case Action on January 8, 2018, indicating that Petitioner's FAP benefit rate was \$ [REDACTED] for the month of January 2018, and \$ [REDACTED] for February 2018 ongoing. In making this decision, the Department calculated Petitioner's earned income to be \$ [REDACTED] self-employment income to be \$ [REDACTED] and unearned income to be \$ [REDACTED].

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), p. 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), 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, p. 5-7. A standard monthly amount must be determined for each income source used in the budget. BEM 505, p. 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.

The Department did not provide any detailed information about how Petitioner's employment income of \$ [REDACTED] and self-employment income of \$ [REDACTED] were calculated. Without detailed information about how these figures were calculated, the Department has not met its burden of proof in establishing that it followed policy when calculating Petitioner's FAP benefit rate.

It should be noted that based upon the application, in-person interview, and emails between the Petitioner and the Department that Petitioner is not employed with [REDACTED] and also self-employed with [REDACTED]. Therefore, inclusion of an employment income and self-employment income in the same budget month was improper.

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 January 2018 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. Reprocess and recalculate Petitioner's application for FAP benefits from January 2018 ongoing;
2. If Petitioner remains eligible for FAP benefits and is eligible for a greater FAP benefit, issue supplements from January 2018 ongoing in accordance with Department policy; and
3. Notify the 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]  
[REDACTED]

**Petitioner**

[REDACTED]  
[REDACTED]  
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