



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: March 22, 2018
MAHS Docket No.: 18-001513
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 March 21, 2018, from Detroit, Michigan. The Department of Health and Human Services (Department) was represented by [REDACTED], Assistance Payments Worker. The Petitioner was self-represented and had the translation services of [REDACTED], a Department employee.

ISSUE

Did the Department properly calculate Petitioner's Food Assistance Program (FAP) benefits effective March 1, 2018?

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 January 4, 2018, the Department issued a Redetermination to Petitioner and scheduled a February 1, 2018, telephone interview.
2. On January 18, 2018, the Department received the completed Redetermination from Petitioner.
3. On February 1, 2018, the telephone interview was held.
4. On February 1, 2018, in consideration of the interview and the Redetermination, the Department issued a Notice of Case Action reducing Petitioner's FAP benefits

from over \$ [REDACTED] to \$ [REDACTED] and excluded Furqan Al-Tamimi, Petitioner's [REDACTED]-year-old and eldest daughter, from the group because she was not an eligible student.

5. On February 8, 2018, Petitioner submitted a hearing request 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 removed Petitioner's daughter from the FAP group due to her student status and reduced the Petitioner's FAP benefit rate significantly after consideration of Yousef's, her eldest son's, employment income.

FAP group composition is established by determining who lives together, the relationships of those living together, whether they purchase and prepare food together or separately, and whether the individuals reside in eligible living situations. BEM 212 (January 2017), p. 1. Parents and their children **under** 22 years of age who live together **must** be in the same group regardless of whether the children have their own spouse or child who lives in the group. *Id.* All of Petitioner's children are under age 22 and all reside in her home. Therefore, from the outset, Petitioner has a group size of six. However, a person who is in student status and does not meet the criteria set forth in BEM 245 is a non-group member. BEM 212, p. 9. A person enrolled in a post-secondary education program may be in student status and is not eligible for FAP benefits if that person does not meet certain criteria. BEM 245 (January 2018), p. 2. In FAP cases, a person is considered to be in student status if that person is age 18-49 and enrolled half-time or more in a regular curriculum at a college or university that offers degree programs regardless of whether a diploma is required. BEM 245, p. 4. The parties agree that Petitioner's eldest son and daughter were properly designated as students during the relevant period.

If a person is in student status, he/she must meet certain criteria to be eligible for assistance. BEM 245, p. 2. To be eligible, he/she must meet one of the following criteria:

- Receiving Family Independence Program (FIP) benefits.
- Enrolled in an institution of higher education as a result of participating in a Job Training Partnership Act (JTPA) program, program under Section 236 of the Trade Readjustment Act of 1974, another State or local government employment and training program.
- Physically or mentally unfit for employment.
- Employed for at least 20 hours per week and paid for such employment.
- Self-employed for at least 20 hours per week and earning weekly income at least equivalent to the federal minimum wage multiplied by 20 hours.
- Participating in an on-the-job training program.
- Participating in a State or federally-funded work study program during the regular school year.
- Providing more than half of the physical care of a group member under the age of six.
- Providing more than half of the physical care of a group member age six through 11 and the local office has determined adequate child care is not available to enable the person to attend class and work at least 20 hours per week or participate in a state or federally-financed work study program during the regular school year.
- A single parent enrolled full-time in an institution of higher education who care for a dependent under age 12.

BEM 245, pp. 4-5. Neither party raised any of the eligibility criteria as an issue other than employment for at least 20 hours per week. The Department contends and Petitioner agrees that her eldest son was working at least 20 hours per week, but that her eldest daughter was not; therefore, Petitioner's eldest daughter is ineligible for benefits, but her son remains in the FAP group. The Department's decision to hold Petitioner's eldest daughter ineligible for FAP benefits was in accordance with policy.

Next, an evaluation of the calculation of benefits is necessary. All countable earned and unearned income available to the group 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 group'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, 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 bi-weekly is converted to a standard amount by multiplying the average of the bi-weekly 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.

Petitioner, her eldest daughter, and her two youngest children each receives \$ [REDACTED] per month in Supplemental Security Income (SSI). However, because Petitioner's eldest daughter is considered a non-group member, her income should not be considered in the calculation of Petitioner's FAP budget. BEM 212, p. 9. Petitioner's husband receives \$ [REDACTED] per month in Retirement, Survivors, and Disability Insurance (RSDI). Since each of these individuals received income on a monthly basis, no further calculations are necessary for these individuals.

Petitioner's eldest son was employed at [REDACTED], effective May 31, 2017. He had earnings from the Employer on January 5, 2018, for \$620.66 and on January 19, 2018, for \$ [REDACTED]. He is paid on a bi-weekly basis. Based upon these wages, his monthly standardized income is \$ [REDACTED]. BEM 505, pp. 7-9.

In reviewing the FAP Gross Income Test and the FAP EDG Net Income Results Test, the Department properly considered Petitioner's eldest son's employment income. However, the Department overcalculated the group's unearned income by \$ [REDACTED]. Neither party provided any evidence of other unearned income which might explain this additional amount.

After consideration and calculation of gross income, the Department must consider any applicable deductions. Petitioner's husband is 61 years old and considered a senior for purposes of Department calculations. BEM 550 (January 2017), p. 1. Since Petitioner's group includes a Senior, Disabled, or disabled Veteran (SDV) member, her 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 for her husband's medical expenses greater than \$35.00;
- An earned income deduction equal to 20% of any earned income.

BEM 554 (January 2017), p. 1; BEM 556 (July 2013), p. 3.

Petitioner was properly awarded an earned income deduction for her son's employment income at \$ [REDACTED]. She also received the proper standard deduction of \$ [REDACTED] based upon her group size of five. RFT 255 (October 2017), p. 1. The Department did not include any deductions for dependent care or child support. The Petitioner agrees that she does not have any dependent care or child support expenses. Likewise, Petitioner

had not reported medical expenses for her husband, and no medical expense deduction was made.

The Department did not provide an excess shelter deduction budget, but the Notice of Case Action shows that Housing Costs of \$████ were considered, in addition to the Heat and Utility Standard. The Heat and Utility Standard was properly considered. RFT 255, p. 1. The Department was uncertain at the hearing of how the \$████ was calculated for the housing expense.

Housing expenses include rent, mortgage, a second mortgage, home equity loans, required condo or maintenance fees, lot rent or other payments including interest leading to the ownership of the shelter occupied by the FAP group. BEM 554, p. 13. Property taxes, state and local assessments, and insurance on the structure are also allowable housing expenses. BEM 554, p. 14. However, insurance for the cost of the contents of the structure, including furniture, clothing, and other personal belongings, is not allowed. *Id.* The entire amount of the insurance including structure and its contents may be deducted when the value of each cannot be determined separately. *Id.* Petitioner testified that she has received an exemption from the City of Detroit for her property taxes and does not owe them. She also testified that she pays \$████ annually, or \$████ per month, for her home owner's insurance. Finally, Petitioner owns her home outright and does not have a mortgage.

While the Department is uncertain of how it arrived at the housing expense deduction, even if the full \$40.00 was considered for Petitioner's home owner's insurance and the total net income was reduced by \$████ as discussed above, Petitioner is not eligible for an excess shelter deduction because her shelter expense is less than 50% of her household income. BEM 556, pp. 4-5.

Therefore, the only error which would lead to a slight difference in Petitioner's FAP benefit rate is based upon the calculation of unearned income.

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 meet its burden of proof to establish that it had acted in accordance with Department policy when it calculated Petitioner's FAP benefit rate beginning March 2018.

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 for March 2018 ongoing;
2. If Petitioner remains eligible for FAP benefits, and the recalculated benefit rate is greater than benefits previously issued, issue supplements from March 2018 ongoing in accordance with Department policy; and
3. Notify 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]
[REDACTED]

Petitioner

[REDACTED]
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