



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 29, 2018  
MAHS Docket No.: 18-001674  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris**

**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 28, 2018, from Detroit, Michigan. The Petitioner was represented by himself. An Arabic translator [REDACTED] also appeared as a translator for Petitioner. The Department of Health and Human Services (Department) was represented by [REDACTED], Eligibility Specialist.

**ISSUE**

Did the Department properly process the Petitioner's change in self-employment (ending) and employment starting with St. Vincent?

**FINDINGS OF FACT**

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

1. The Petitioner is a FAP recipient. On January 22, 2018 the Petitioner reported to the Department that his self-employment with [REDACTED] had ended as of January 6, 2018 and provided the Department verification of his last pay of [REDACTED] received January 7, 2018, for the period ending January 6, 2018. Exhibit A.
2. The Petitioner also reported starting employment with [REDACTED] on January 3, 2018 reporting hours of 40 hours per week, at [REDACTED] and biweekly pay checks. Exhibit B.

3. The Petitioner provided his pay stubs to the Department for [REDACTED] on January 22, 2018. The Department used the pay stub for January 19, 2018 when calculating the earnings in the amount of [REDACTED] as it was the first full representative pay. Exhibit C.
4. The Department issued a Notice of Case Action on February 2, 2018 increasing the Petitioner's FAP benefits for March 1, 2018. The Petitioner's March 2018 FAP benefits were [REDACTED]. The earned income on which the benefits were based was [REDACTED], which were Petitioner's earnings from his new job ([REDACTED]). Exhibit D.
5. The Petitioner has a FAP group consisting of 6 members, he pays rent in the amount of [REDACTED] monthly and pays for heat and received a utility allowance of [REDACTED] a month as a housing cost.
6. The Department calculated the Petitioner's FAP benefits for February 2018 and included self-employment income of [REDACTED] representing the monthly earnings from Petitioner's [REDACTED] self-employment previously used in FAP budgets and earned income from [REDACTED] in the amount of \$ [REDACTED]. Exhibit A, B, and F.
7. The FAP benefits issued for February 2018 were [REDACTED] based upon a group size of 6, and total earned income of [REDACTED]. Exhibit F.
8. The Petitioner requested a timely hearing on February 2, 2018 protesting the Department's actions.

### 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 requested a hearing regarding the Department's calculation of his February 2018 FAP benefit amount. The Petitioner contended that the Department should not have included the prior monthly earnings from his ended self-employment as a [REDACTED] driver which he reported to the Department on February 22, 2018.

The Department included the previously determined monthly income for [REDACTED] a month and the Petitioner contended he only received income of [REDACTED] for February 2018. The Petitioner reported the ending of self-employment on January 22, 2018 for employment which ended on January 6, 2018. The records provided by Petitioner demonstrate that he received an express payout of [REDACTED] on January 7, 2019. Exhibit A, p. 6. The issue therefore is whether the Department properly processed the reported change in employment and decrease in income, and whether the Department was correct in including the entire previously determined monthly amount for [REDACTED] received by Petitioner from [REDACTED] while self-employed. In this case, the Petitioner did not report the change within 10 days of receiving the payment of [REDACTED] on January 7, 2018, thus the change was not timely reported when reported on January 22, 2018.

In addition, the Petitioner timely reported starting new employment with [REDACTED] on January 3, 2018 and began that employment January 3, 2018. The Petitioner is paid weekly and thus received his first full pay check on January 19, 2017 and provided the pay stubs to the Department on January 22, 2017. The stubs also included a pay for January 12, 2018 which was not used when calculating the FAP budget. The Pay stubs were timely provided.

BAM 105 provides:

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. Changes must be reported **within 10 days of receiving the first payment reflecting the change.**

**Income** reporting requirements are limited to the following:

- Earned income:
  - Starting or stopping employment.
  - Changing employers.
  - Change in rate of pay.
  - Change in work hours of more than five hours per week that is expected to continue for more than one month. BAM 105.

The changes in income and employment and their processing for [REDACTED] and [REDACTED] will be addressed separately.

#### **[REDACTED] self-employment ending (income decrease)**

The Department was required to process the change as follows for an income decrease due to ending of [REDACTED] self-employment. Client reporting requirements do not necessarily affect when a budget must be completed. BEM 505, (October 2017), p. 9.

BEM 505 provides that a FAP income decrease that results in a benefit increase must be effective no later than the first allotment issued 10 days after the date the change was reported, provided necessary verification was returned by the due date. No evidence that verifications were requested by the Department for the [REDACTED] changes, and verification of the income for the last check was provided on January 22, 2018. Thus, the Department did not present evidence that a further verification was sought or required on or after January 22, 2018. The Department must act on a change for FAP benefits within 10 days of becoming aware of the change. In this case, the change regarding [REDACTED] was required to be acted upon February 1, 2018. In this case, the Department had 10 days from January 22, 2018 to process the change, or until February 1, 2018. On February 1, 2018, the first allotment would be issued as of March 2018, and thus the Department was required to include the [REDACTED] income when calculating February 2018 FAP benefits. Had the Petitioner reported the change sooner allowing the Department 10 days to process and complete it in January 2018, the income would have been removed; however, the change in self-employment and income change was not provided within 10 days of receiving the income. The Department thus correctly included the [REDACTED] income when calculating the February 2108 FAP benefits.

**St. Vincent employment starting (income increase)**

As regards the new income from [REDACTED], the change regarding the starting of employment was timely reported on January 3, 2018 and timely verified on January 19, 2018, and resulted in a negative action due to a benefit decrease. BEM 505 provides for an income increase that result in a benefit decrease, action must be taken and notice issued to the client within the Standard of Promptness (FAP 10 calendar days). The effective month is the first full month that begins after the negative action effective date. In this instance, the Department improperly included the income from [REDACTED] in the February 2018 budget. BEM 505 provides the following example:

On 11/21 a FAP client reports starting employment on 11/14  
11/14. Action must be taken to affect January's benefits.  
(allow for 10 calendar days processing and timely suspense  
period. (12 Days). BEM 505, (October 2017), p. 12.

Based upon the above example, the Department was required to include the new income from [REDACTED] beginning March 1, 2018 and should not have included the income in the February 2018 budget. The Department had ten days to act on the change, or until February 1, 2018 and then 12 days notice of the change (pending negative action period) February 13, 2018. The first full month after the negative action date is March 2018.

A negative action is an action by the Department to reduce a benefit. Timely notice must be given for a negative action unless policy specifies adequate notice. BAM 220 (January 2018), p. 4. In addition, the Department must act on a reported change within

10 days. If timely notice is required as demonstrated in this case, the negative action date must be the first workday at least 11 days after the notice was sent or the date the change is expected to occur if that is later. An action requiring timely notice is also referred to as a Pended Negative action. BAM 220 specifies:

A pended negative action occurs when a negative action requires timely notice based on the eligibility rules in this item. Timely notice means that the action taken by the department is effective at least 12 calendar days following the date of the department's action. BAM 220, p. 13.

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 the Petitioner's February 2018 FAP benefits and must recalculate the benefits accordingly.

### **DECISION AND ORDER**

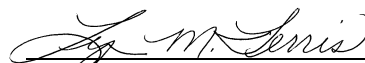
Accordingly, the Department's decision is

**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. The Department shall recalculate the FAP benefits for February 2018 in accordance with Department policy and the Hearing Decision.
2. The Department shall provide the Petitioner a FAP supplement if a supplement is due for any FAP benefits he is entitled to receive, if any, in accordance with Department policy.

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**Lynn M. Ferris**  
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]  
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