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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR



Date Mailed: May 11, 2018
MAHS Docket No.: 18-003142
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Eric J. Feldman

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 May 8, 2018, from Lansing, Michigan. Petitioner represented herself for the hearing. [REDACTED], Petitioner's spouse, testified as a witness for Petitioner. The Department of Health and Human Services (Department) was represented by [REDACTED], Assistant Payment Supervisor, from the [REDACTED] County DHHS office; and [REDACTED], Lead Worker, from the [REDACTED] County DHHS office.

ISSUES

Did the Department properly determine Petitioner's Food Assistance Program (FAP) group composition effective [REDACTED]?

Did the Department properly calculate Petitioner's FAP allotment 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. Petitioner is an ongoing recipient of FAP benefits.
2. On [REDACTED], Petitioner reported that her spouse returned to her home, resulting her FAP case increasing to a group size of two effective [REDACTED]. [Exhibit A, pp. 1, 18, and 26-34.]

3. For [REDACTED], Petitioner's FAP group size was one and she received \$ [REDACTED] in benefits. [Exhibit A, p. 24.]
4. For [REDACTED], Petitioner's FAP group size was one and her benefits were reduced to \$ [REDACTED] [Exhibit A, pp. 15 and 24.]
5. For [REDACTED], the spouse had his own FAP case.
6. For [REDACTED], Petitioner's FAP group size was two and her benefits were increased to \$ [REDACTED] [Exhibit A, p. 18.]
7. On [REDACTED], and [REDACTED], Petitioner filed hearing requests, disputing the Department's actions. [Exhibit A, pp. 2-5; Exhibit B, pp. 1-2.]

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.

Preliminary matter

Based on Petitioner's hearing requests and testimony, she is disputing the calculation of her FAP benefits for [REDACTED] and [REDACTED], which the undersigned Administrative Law Judge (ALJ) will address below. [Exhibit A, pp. 2-5; Exhibit B, pp. 1-2.]

FAP benefits for [REDACTED]

For [REDACTED], Petitioner's FAP group size was one and she received \$ [REDACTED] in benefits. [Exhibit A, p. 15.] However, after a review of the record, Petitioner's FAP group size should have been two effective [REDACTED]. On [REDACTED], Petitioner reported that her spouse returned to the home. [Exhibit A, pp. 1, 18, and 26-34.] The Department processed this reported change, but it did not take into effect until [REDACTED] which, as stated above, is incorrect. [Exhibit A, pp. 1 and 18.]

A member add that increases benefits is effective the month after it is reported or, if the new member left another group, the month after the member delete. BEM 212 (January 2017), p. 9. In determining the potential FAP benefit increase, the Department assumes

the Family Independence Program (FIP)/State Disability Assistance (SDA) supplement and new grant amount have been authorized. BEM 212, p. 9.

When a member leaves a group to apply on his own or to join another group, a member delete should be completed in the month the local office learns of the application/member add. BEM 212, p. 9. Initiate recoupment if necessary. BEM 212, p. 9. If the member delete decreases benefits, adequate notice is allowed. BEM 212, p. 9

Pursuant to the above policy, the Department learned that the spouse joined Petitioner's household in [REDACTED], which meant that the group size should have increased the following month, [REDACTED]. [Exhibit A, pp. 1, 18, and 26-34.] The Department, though, argued that the spouse received FAP benefits on his own FAP case. Policy actually addresses the Department concerns, which states recouping the spouse's FAP benefits might be necessary due to him joining another FAP group. See BEM 212, p. 9.

Based on the foregoing information and evidence, the undersigned finds that the Department improperly determined Petitioner's FAP group composition for [REDACTED]. As stated above, Petitioner's FAP group composition should have been two for [REDACTED] in accordance with Department policy. And because Petitioner's FAP group composition was improper for [REDACTED], this means that the FAP budget for [REDACTED] was also improperly calculated. The undersigned will not further address the remaining calculations in the [REDACTED] FAP budget, due to the budget already needing to be recalculated. [Exhibit A, pp. 15-17.]

FAP benefits for [REDACTED]

For [REDACTED] Petitioner's FAP group size was two and her benefits were increased to \$ [REDACTED] [Exhibit A, p. 18.] It should be noted that the Department properly included Petitioner's spouse in the FAP group for April 2018. [Exhibit A, p. 18.] As a part of the evidence record, the Department presented an April 2018 FAP budget for review.

First, the Department calculated the gross unearned income to be \$ [REDACTED] which both Petitioner and her spouse disputed. The Department indicated that their unearned income consisted of the following: (i) the spouse received \$ [REDACTED] in Supplemental Security Income (SSI); (ii) Petitioner received \$ [REDACTED] in SSI; (iii) both will receive an average of \$ [REDACTED] in State SSI Payments (SSP) income; and (iv) Petitioner received \$ [REDACTED] in child support income. [Exhibit A, p. 18.] The spouse did not dispute he received \$ [REDACTED] in SSI income nor did Petitioner dispute she received \$ [REDACTED] in child support income. Petitioner disputed, though, the calculation of her SSI income. The spouse also appeared to dispute the SSP calculation.

In regards to Petitioner's SSI income, she testified she only received \$ [REDACTED] or \$ [REDACTED] in benefits for [REDACTED]. She testified that the Social Security Administrative (SSA) deducted money from her SSI check due to an overpayment and child support she is receiving. As part of the evidence record, the Department presented Petitioner's State Online Query (SOLQ), which is a computer data exchange with the Social Security

Administration (SSA) that assist in the verification of Social Security numbers (SSNs), Retirement, Survivors and Disability Insurance (RSDI), Supplemental Security Income (SSI) and Medicare benefits. See BAM 801 (January 2018), pp. 1-4. A review of the SOLQ shows that Petitioner received a gross payable SSI income of \$ [REDACTED] and that SSA is recovering \$ [REDACTED] from each check due to an overpayment. [Exhibit A, p. 11.] On [REDACTED], and [REDACTED], the Department had collateral contacts with SSA confirming that Petitioner's gross income is \$ [REDACTED] but that she will be paying a \$ [REDACTED] overpayment effective [REDACTED], which results in a net income of \$ [REDACTED] [Exhibit A, p. 1.] This net income of \$ [REDACTED] is the amount the Department budgeted in the FAP calculation. [Exhibit A, p. 18.]

The Department counts the gross amount of current SSA-issued SSI as unearned income. BEM 503 (July 2017), p. 35. SSI amounts withheld to recoup overpayments due to an intentional program violation (IPV) as defined below are also included in the gross amount. BEM 503, p. 35. IPV means there was a finding of fraud or an agreement to repay in lieu of prosecution. BEM 503, p. 35. The Department counts recouped SSI only if IPV information is volunteered by the SSI recipient or other reliable source. BEM 503, p. 35. Do not initiate any contacts. BEM 503, p. 35.

Moreover, BEM 500, defines gross income as the amount of income before any deductions such as taxes or garnishments. BEM 500 (July 2017), p. 4. BEM 500 further states that amounts deducted by an issuing agency to recover a previous overpayment or ineligible payment are not part of gross income. BEM 500, p. 6. These amounts are excluded as income. BEM 500, p. 6. Except, the following overpayment amounts must be included in gross income:

- Any portion of an overpayment (that is normally countable) if the original payment was excluded income when received.
- Cash assistance recoupment amounts due to Intentional Program Violation (IPV) are automatically counted for FAP in Bridges.
- Supplemental Security Income (SSI) amounts recouped due to IPV are included in countable gross income for cash assistance programs and FAP.

IPV means there is a finding of fraud or an agreement to repay in lieu of prosecution. Do not exclude recouped SSI when IPV information is volunteered by the SSI recipient or other reliable source. Do not initiate any contacts to obtain this information.

BEM 500, p. 6.

Based on the foregoing information, the Department properly calculated Petitioner's SSI income of \$ [REDACTED] [Exhibit A, p. 18.] Pursuant to the above policy, the Department properly followed policy to not include the overpayment in the calculation of the gross income. As stated above, the evidence established that Petitioner's gross income is \$ [REDACTED] but that she will be paying a \$ [REDACTED] overpayment effective [REDACTED] which results in a net income of \$ [REDACTED] [Exhibit A, p. 1.] Petitioner claimed that SSA is also

recovering child support payments from her SSI check, but she failed to provide any such evidence.

In regards to the SSP payments, RFT 248 states that the monthly SSI payment for an independent living/couple is \$21.00 (\$10.50 each). RFT 248 (January 2018), p. 1. The policy further states that SSP payments are issued quarterly in March, June, September, and December. RFT 248, p. 1; BEM 660 (January 2017), pp. 1-4. Because April falls into the 2nd quarter (April 2018 to June 2018), Petitioner and her spouse will not receive this quarterly check until [REDACTED]. See RFT 248, p. 1. As such, the Department properly budgeted an average SSI payment for Petitioner and spouse to be \$ [REDACTED] [Exhibit A, p. 18.]

In sum, the Department properly calculated the unearned income of \$ [REDACTED] which consisted of Petitioner's SSI, the spouse's SSI, the SSP benefits, and the child support income. [Exhibit A, p. 18.]

Next, the Department properly applied the \$ [REDACTED] standard deduction applicable to Petitioner's group size of two. RFT 255 (October 2017), p. 1. Moreover, Petitioner nor her spouse indicated that they had medical expenses, dependent care, or child support expenses that can qualify as a deduction for the budget. [Exhibit A, p. 18; BEM 554 (August 2017), p. 1.]

Also, the Department presented the FAP – Excess Shelter Deduction budget (shelter budget), which indicated that Petitioner's monthly housing expense is \$ [REDACTED] [Exhibit A, p. 20.] In [REDACTED] Petitioner and her spouse reported to the Department that they moved to a new residence on [REDACTED] and also provided verification of their new housing expenses of \$ [REDACTED]. On [REDACTED], the Department testified that Petitioner reported a change in address, resulting in a shelter verification being generated and due back by [REDACTED]. The Department testified that [REDACTED] County received verification (a rental agreement) of this reported change on [REDACTED], but the new shelter expenses will not take into effect until [REDACTED].

The Department verifies shelter expenses at application and when a change is reported. BEM 554, p. 14. If the client fails to verify a reported change in shelter, remove the old expense until the new expense is verified. BEM 554, p. 14. The Department verifies the expense and the amount for housing expenses, property taxes, assessments, insurance and home repairs. BEM 554, p. 14.

For FAP cases, the Department acts on a change reported by means other than a tape match within 10 days of becoming aware of the change. BAM 220 (January 2018), p. 7. Changes which result in an increase in the household's benefits must be effective no later than the first allotment issued 10 days after the date the change was reported, provided any necessary verification was returned by the due date. BAM 220, p. 7. A supplemental issuance may be necessary in some cases. BAM 220, p. 7. If necessary verification is not returned by the due date, take appropriate action based on what type of verification was requested. BAM 220, p. 7. If verification is returned late, the increase must affect the month after verification is returned. BAM 220, p. 7.

Based on the foregoing information and evidence, the Department properly calculated Petitioner's shelter expense of \$ [REDACTED] for [REDACTED]. Pursuant to the above policy, Petitioner's reported shelter change of \$ [REDACTED] in [REDACTED], would not take into effect until on or about [REDACTED]. BAM 200, p. 7. It appears the reported change should have gone into effect [REDACTED], not [REDACTED], as the Department indicated. See BAM 220, p. 7. However, the undersigned is not addressing the benefit month of [REDACTED] for this hearing. Petitioner can file another hearing request to dispute the calculation of her [REDACTED] FAP benefits. BAM 600 (April 2018), pp. 1-6 (Petitioner can request a hearing for FAP only, the current level of benefits or denial of expedited service).

The Department also provided Petitioner with the \$ [REDACTED] mandatory heat and utility (h/u) standard, which encompasses all utilities (water, gas, electric, telephone) and is unchanged even if a client's monthly utility expenses exceed the \$ [REDACTED] amount. [Exhibit A, p. 20; BEM 554, pp. 15-17; and RFT 255, p. 1.]

Furthermore, the total shelter obligation is calculated by adding Petitioner's housing expenses to the utility credit; this amount is found to be \$ [REDACTED] [Exhibit A, p. 20.] Then, the Department subtracts the total shelter amount from fifty percent of the \$ [REDACTED] adjusted gross income. [Exhibit A, p. 18.] Fifty percent of the adjusted gross income is \$ [REDACTED] [Exhibit A, p. 20.] When the Department subtracts the total shelter amount from fifty percent of the gross income, the excess shelter amount is found to be \$ [REDACTED] [Exhibit A, p. 20.]

The Department then subtracts the \$ [REDACTED] adjusted gross income from the \$ [REDACTED] excess shelter deduction, which results in a net income of \$ [REDACTED] [Exhibit A, pp. 18-19.] A chart listed in RFT 260 is used to determine the proper FAP benefit issuance. Based on Petitioner's group size and net income, the Department properly determined that Petitioner's FAP benefit issuance is found to be \$ [REDACTED] effective [REDACTED]. RFT 260 (October 2017), p. 13.

DECISION AND ORDER


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 (i) the Department did not act in accordance with Department policy when it improperly determined Petitioner's FAP group composition for [REDACTED]; (ii) the Department did not act in accordance with Department policy when it improperly calculated Petitioner's FAP benefits for [REDACTED]; (iii) the Department acted in accordance with Department policy when it properly determined Petitioner's FAP group composition for [REDACTED]; and (iv) the Department acted in accordance with Department policy when it properly calculated Petitioner's FAP benefits for [REDACTED].

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to the [REDACTED] FAP benefits and **REVERSED IN PART** with respect to the [REDACTED] FAP benefits.

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. Apply Petitioner's FAP group composition to be two (Petitioner and spouse) from [REDACTED] to [REDACTED];
2. Recalculate Petitioner's FAP budget from [REDACTED] to [REDACTED];
3. Issue supplements to Petitioner for any FAP benefits she was eligible to receive but did not from [REDACTED] to [REDACTED]; and
4. Notify Petitioner of its decision.

EF/hb



Eric J. Feldman
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) 763-0155; 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]

Department Representative

[REDACTED]

DHHS

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Petitioner

[REDACTED]