



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: February 14, 2018
MAHS Docket No.: 18-000236
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

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 8, 2018, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Anthony Couls, Hearing Facilitator.

ISSUE

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

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 was an ongoing FAP recipient.
2. On December 15, 2017, Petitioner submitted a redetermination.
3. According to the redetermination, Petitioner was a member of a FAP group that consisted of herself and her three children.
4. Petitioner had unearned income in the form of child support.
5. One of Petitioner's children was enrolled in college at [REDACTED].

6. One of Petitioner's children had income from employment (Exhibit C).
7. On December 27, 2017, the Department sent Petitioner a Notice of Case Action informing Petitioner she was approved for FAP benefits with the monthly benefit amount of \$110 effective January 1, 2018, ongoing.
8. On January 8, 2018, Petitioner submitted a request for hearing disputing 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, Petitioner submitted a request for hearing disputing the Department's calculation of her FAP benefit amount. Specifically, Petitioner testified that the Department erred in determining one of her children was an ineligible student, that her child that had income from employment was not actually a member of her group, and the amount of her housing expense that was budgeted.

For FAP cases, a person enrolled in a post-secondary education program may be in student status, as defined by Department BEM 245 (October 2017), p. 2. A person in student status must meet certain criteria in order to be eligible for assistance. BEM 245, p. 2. A person is in student status if he is: age 18 through 49 and enrolled half-time or more in a: vocational, trade, business, or technical school that normally requires a high school diploma or an equivalency certificate, or a regular curriculum at a college or university that offers degree programs regardless of whether a diploma is required. BEM 245, pp. 2-3. In order for a person in a student status to be eligible for FAP benefits, he must meet certain criteria. BEM 245, p. 4. One of the criterion is being employed for at least an average of 20 hours per week and paid for such employment. BEM 245, p. 4.

Petitioner informed the Department that she was living with three of her children, one of which was enrolled in [REDACTED]. Petitioner stated that her son was taking two classes, totaling 6 credits. Petitioner conceded that he was enrolled half-time in college. Petitioner also acknowledged her son was not employed. Petitioner did not

assert that her son qualified for student status based on any of the other criterion listed in BEM 245. Therefore, the Department acted in accordance with policy when it determined Petitioner's son was an ineligible group member.

Petitioner also informed the Department that another one of her sons, who had income from employment, was a group member. According to the redetermination, Petitioner listed that child as an individual living in her home. Petitioner stated at the hearing, however, that he had left her home as of January 1, 2018. During the redetermination process and at the time the Notice of Case Action was issued, the child was living in her home. Petitioner's child was also over the age of [REDACTED]. Therefore, the Department properly included the child and his income in Petitioner's FAP group.

The final issue that Petitioner presented was the calculation of her housing expense. When determining FAP eligibility, the Department provides FAP groups with an excess shelter deduction. When calculating the excess shelter deduction, the Department will consider the client's total shelter amount and reduce that number by 50% of the adjusted gross income. A factor included in the total shelter amount is the group's housing expense. Housing expenses include rent, mortgage, a second mortgage, home equity loan, required condo or maintenance fees, lot rental or other payments including interest leading to ownership of the shelter occupied by the FAP group. BEM 554, p. 13. The expense must be a continuing one. BEM 554, p. 13. The Department will verify 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, the Department will remove the old expense until the new expense is verified. BEM 554, p. 14. To request verification of information, the Department sends a verification checklist (VCL) which tells the client what verification is required, how to obtain it, and the due date. BAM 130 (April 2017), p. 3. For FAP cases, the Department allows the client 10 calendar days to provide the verification that is required. BAM 130, p. 7.

In the redetermination, Petitioner specifically advised the Department that she had a change in her housing expense. Petitioner indicated her rent was \$910 per month. According to the excess shelter deduction calculation, the Department only budgeted an \$890 housing expense. The Department testified that figure was used because the most recent verified housing expense submitted by the Petitioner was \$890.

The Department conceded that Petitioner provided notification that her housing expense had increased. The Department did not send Petitioner a Verification Checklist (VCL) requesting verification of the new expense. Policy specifically states the Department will verify a housing expense when a change is reported. The Department failed to request verification of Petitioner's new housing expense, and therefore, deprived her of the opportunity to potentially increase her FAP benefit amount. Thus, the Department failed to establish that it properly followed policy when determining Petitioner's FAP benefit amount.

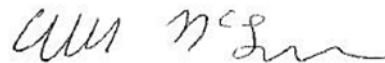
DECISION AND ORDER

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 the Department failed to establish that it acted in accordance with policy when it determined Petitioner's FAP benefit amount. 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. Redetermine Petitioner's FAP eligibility as of January 1, 2018, ongoing;
2. If Petitioner is eligible for additional FAP benefits, issue supplements she was entitled to receive as of January 1, 2018, ongoing;
3. Notify Petitioner of its FAP decision in writing.

EM/cg



Ellen McLemore
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

Via Email:

MDHHS-Wayne-18-Hearings
M. Holden
D. Sweeney
BSC4- Hearing Decisions
MAHS

Petitioner – Via First Class Mail:

