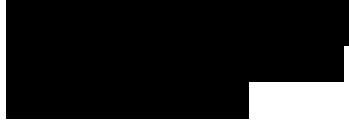




RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR



Date Mailed: March 27, 2018  
MAHS Docket No.: 18-001535  
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 March 26, 2018, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Brad Reno, Eligibility Specialist/Hearing Facilitator.

**ISSUES**

Did the Department properly deny Petitioner's application for State Emergency Relief (SER) benefits?

Did the Department properly close Petitioner's Medical Assistance (MA) benefits?

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. On [REDACTED], 2017, Petitioner submitted an application for SER benefits (Exhibit B).
2. Petitioner was an ongoing FAP recipient and MA recipient under the Health Michigan Plan (HMP).

3. On December 21, 2017, the Department sent Petitioner an SER Verification Checklist (VCL) (Exhibit C).
4. On December 21, 2017, the Department sent Petitioner a VCL related to her FAP benefit case (Exhibit 1).
5. On December 28, 2017, the Department sent Petitioner a State Emergency Relief Decision Notice informing her that her application was denied (Exhibit E).
6. On December 29, 2017, Petitioner submitted verification of her income from employment (Exhibit I).
7. On January 29, 2018, the Department sent Petitioner a Notice of Case Action informing her that her FAP benefits were being reduced to \$15 per month effective March 1, 2018, ongoing (Exhibit H).
8. On January 29, 2018, the Department sent Petitioner a Health Care Coverage Determination Notice informing Petitioner that her MA benefit case was closing effective March 2, 2018, ongoing (Exhibit J).
9. On February 6, 2018, Petitioner submitted two separate hearing requests disputing the Department's actions regarding her SER, MA and FAP benefits (Exhibit A).

### **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).

#### **SER**

The State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by the Department (formerly known as the Department of Human Services) pursuant to MCL 400.10 and Mich Admin Code, R 400.7001-.7049.

On [REDACTED], 2017, Petitioner submitted an application for SER benefits for repairs to her furnace. On December 21, 2017, the Department sent Petitioner a VCL requesting various verifications. Proofs were due by December 28, 2017.

Applicants may file an SER application in any county in Michigan. ERM 103 (October 2017), p. 1. At application, Clients must be informed of all verifications that are required and where to return verifications. ERM 103, p. 7. The due date is eight calendar days beginning with the date of application. ERM 103, p. 7. If the application is not processed on the application date, the deadline to return verifications is eight calendar days from

the date verification is requested. ERM 103, p. 7. The Department will use the DHS-3503, SER Verification Checklist, to request verification and to notify the client of the due date for returning the verifications. ERM 103, p. 7. The Department sends a negative action notice when: the client indicates a refusal to provide a verification OR the time period given has elapsed and the client has not made a reasonable effort to provide it. BAM 130 (April 2017), p. 7.

The Department testified that Petitioner did not submit the request verifications by December 28, 2017. As a result, the Department sent Petitioner a State Emergency Relief Decision Notice on December 28, 2017, informing her that her SER application had been denied.

Petitioner submitted the required verifications on December 29, 2017. Petitioner testified that she received the SER VCL. However, Petitioner also received a VCL requesting verifications related to her FAP case. The verifications for the FAP case had a due date of January 2, 2018. Petitioner did not notice that the SER VCL had an earlier due date, resulting in the untimely submission of her verifications.

Petitioner was reasonable in her misunderstanding of the verification due date. The Department created a confusing situation for Petitioner. The Department sent separate VCLs on the same date requesting much of the same information but with different due dates. Petitioner made a reasonable effort to comply with the Department's request for information. Therefore, the Department did not act in accordance with policy when it denied Petitioner's SER application.

## **FAP**

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 verification of her income from employment to the Department on December 28, 2017, pursuant to her SER application. As a result, the Department recalculated Petitioner's FAP benefit amount. The Department sent Petitioner a Notice of Case Action on January 29, 2018, informing Petitioner that her FAP benefit amount was decreasing to \$15 effective March 1, 2018, ongoing. The Department submitted a FAP budget to establish how Petitioner's FAP benefit amount was calculated (Exhibit G).

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), pp. 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), pp. 1-2. 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. 5-6. A standard monthly amount must be determined for each income source used in the budget. BEM 505, pp. 7-8. Income received biweekly is converted to a standard amount by multiplying the average of the biweekly pay amounts by the 2.15 multiplier. BEM 505, pp. 7-9. Income received weekly is multiplied by a 4.3 multiplier. BEM 505, pp. 7-9. Income received twice per month is added together. BEM 505, pp. 7-9. An employee's wages include salaries, tips, commissions, bonuses, severance pay, and flexible benefit funds not used to purchase insurance. The Department counts gross wages in the calculation of earned income. BEM 501 (July 2016), pp. 6-7.

The Department determined Petitioner's monthly earned income amount was \$1613. The Department presented the pay statements that Petitioner submitted on December 29, 2017. The pay statements show Petitioner received gross earnings in the amount of \$438.75 on December 1, 2017; \$390 on December 8, 2017; \$340 on December 15, 2017; and \$332.50 on December 22, 2017. Petitioner was paid weekly. When averaging the pay statements and multiplying by the 4.3 multiplier, it results in a standard monthly amount of \$1613. Therefore, the Department properly determined Petitioner's earned income.

The deductions to income on the net income budget were also reviewed. There was no evidence presented that Petitioner's group includes a senior/disabled/veteran (SDV) household member. BEM 550 (October 2015), pp. 1-2. Thus, the 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.
- An earned income deduction equal to 20% of any earned income.

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

The Department will reduce the gross countable earned income by 20 percent and is known as the earned income deduction. BEM 550 (January 2017), p.1. The Department correctly determined Petitioner is entitled to an earned income deduction of \$323. Petitioner's FAP benefit group size of one justifies a standard deduction of \$160. RFT 255 (October 2017), p. 1. There was no evidence presented that Petitioner had any out-of-pocket dependent care or child support expenses. Therefore, the budget properly excluded any deduction for dependent care or child support expenses.

In calculating the excess shelter deduction of \$79, the Department stated that it considered Petitioner's verified housing expense of \$107.39 and that she was

responsible for a monthly heating expense, entitling her to the heat/utility standard of \$537. BEM 554, pp. 14-15. The Department testified when calculating Petitioner's excess shelter amount they added the total shelter amount and subtracted 50% of the adjusted gross income. Petitioner's excess shelter deduction was properly calculated at \$79 per month.

The FAP benefit group's net income is determined by taking the group's adjusted gross income and subtracting the allowable excess shelter expense. After subtracting the allowable deductions, the Department properly determined Petitioner's adjusted gross income to be \$1130. Petitioner's adjusted gross income subtracted by the \$79 excess shelter deduction results in a net income of \$1051. A chart listed in RFT 260 is used to determine the proper FAP benefit issuance based on the net income and group size. Based on Petitioner's net income and group size, Petitioner's FAP benefit issuance is \$15. Therefore, the Department properly calculated Petitioner's FAP benefit amount.

## **MA**

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

In this case, when Petitioner submitted her pay statements on December 29, 2017, the Department also reviewed her MA eligibility. The Department concluded that Petitioner was not eligible for HMP because her income exceeded the applicable income limit for her group size.

HMP uses a Modified Adjusted Gross Income (MAGI) methodology. BEM 137 (October 2016), p. 1. An individual is eligible for HMP if her household's income does not exceed 133% of the Federal Poverty Level (FPL) applicable to the individual's group size. BEM 137, p. 1. An individual's group size for MAGI-related purposes requires consideration of the client's tax filing status. In this case, Petitioner filed taxes and did not claim any dependents. Therefore, for HMP purposes, she has a household size of one. BEM 211 (January 2016), pp. 1-2.

133% of the annual FPL in 2017 for a household with one member is \$16,039.80. See <https://aspe.hhs.gov/poverty-guidelines>. Therefore, to be income eligible for HMP, Petitioner's annual income cannot exceed \$16,039.80. To determine financial eligibility under HMP, income must be calculated in accordance with MAGI under federal tax law. BEM 500 (July 2017), p. 3. MAGI is based on Internal Revenue Service rules and relies on federal tax information. BEM 500, p. 3. Income is verified via electronic federal data sources in compliance with MAGI methodology. MREM, § 1.

In order to determine income in accordance with MAGI, a client's adjusted gross income (AGI) is added to any tax-exempt foreign income, tax-exempt Social Security benefits, and tax-exempt interest. AGI is found on IRS tax form 1040 at line 37, form 1040 EZ at line 4, and form 1040A at line 21. Alternatively, it is calculated by taking the "federal taxable wages" for each income earner in the household as shown on the paystub or, if not shown on the paystub, by using gross income before taxes reduced by any money the employer takes out for health coverage, child care, or retirement savings. This figure is multiplied by the number of paychecks the client expects in 2017 to estimate income for the year. See <https://www.healthcare.gov/income-and-household-information/how-to-report/>.

When averaging the pay statements provided by Petitioner's (as mentioned above) and multiplying by 52 (the number of checks Petitioner would receive in a year, as she is paid weekly), Petitioner's income exceeds the limit under the HMP program. Therefore, the Department acted in accordance with policy when it closed Petitioner's MA benefit case.

### **DECISION AND ORDER**

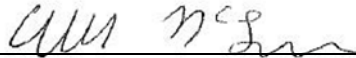
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department acted in accordance with policy when it determined Petitioner's FAP benefit amount and when it closed Petitioner's MA case. The Department did not act in accordance with policy when it denied Petitioner's SER benefits.

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to Petitioner's MA and FAP benefits and **REVERSED IN PART** with respect to Petitioner's SER 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. Reinstate and reprocess Petitioner's SER application;
2. If Petitioner is entitled to SER benefits, issue benefits she is entitled to receive;
3. Notify Petitioner of its SER decision in writing.

EM/cg

  
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**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-Genesee-Union St. District-  
Hearings  
T. Blair  
E. Holzhausen  
M. Holden  
D. Sweeney  
M. Best  
EQAD  
BSC2-Hearing Decisions  
MAHS

**Petitioner – Via First-Class Mail:**

