



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: July 30, 2018
MAHS Docket No.: 18-006302
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 July 26, 2018, from Detroit, Michigan. Petitioner was present with her daughter/Bengali interpreter, [REDACTED]. The Department of Health and Human Services (Department) was represented by Lekiticia Cokley, Family Independence Specialist and Raychael May, Family Independence Manager.

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 applied for FAP benefits on [REDACTED], 2018.
2. Petitioner's household consisted of himself, his wife and his two children.
3. Petitioner had income from employment.
4. Petitioner had rental income.
5. On May 18, 2018, the Department sent Petitioner a Notice of Case Action informing him that his application for FAP benefits was denied.

6. On June 19, 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 an application for FAP benefits on [REDACTED], 2018. On May 18, 2018, the Department sent Petitioner a Notice of Case Action informing him that his application for FAP benefits was denied. The Department testified that the application was denied due to Petitioner's FAP group exceeding the net income limit. A non-categorically eligible Senior/Disabled/Veteran (SDV) FAP group must have income below the net income limits. BEM 550 (January 2017), p.1. Net income limitations are based on group size and are set forth in RFT 250. The Department presented a net income budget to establish Petitioner's group exceeded the net income limit (Exhibit A, pp. 6-7).

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), p. 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), 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, p. 5-7. A standard monthly amount must be determined for each income source used in the budget. BEM 505, p. 8-9. Income received twice per month is added together. BEM 505, p. 8. Income received biweekly is converted to a standard amount by multiplying the average of the biweekly 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.

The Department testified Petitioner's earned income from employment was calculated to be \$2,264 per month. Petitioner had submitted pay statements reflecting his income

from employment pursuant to the application for benefits. Petitioner's pay statements reflected that he received a payment on March 16, 2018, in the amount of \$[REDACTED]; on March 23, 2018, in the amount of \$[REDACTED]; on March 30, 2018, in the amount of \$[REDACTED]; and April 6, 2018, in the amount of \$[REDACTED]. Petitioner confirmed the pay statements were accurate. Petitioner was paid weekly. When Petitioner's payment amounts are averaged and multiplied by the 4.3 multiplier, it results in a total monthly standard amount of \$[REDACTED]. Therefore, the Department correctly calculated Petitioner's monthly income from employment.

Rental income is money an individual (landlord) receives for allowing another individual (renter) to use the landlord's property. BEM 504 (January 2018), p. 1. It includes income from a lease. BEM 504, p. 1. Some types of rental/room and board income are counted as unearned income and some as earned income or self-employment. BEM 504, p. 1. Other rental income means any rental income that is not farm land rental; in-home rental or room and board. BEM 504, p. 2. As an example, policy provides for a scenario where an individual rents his non-homestead house to another individual. BEM 504, p. 2. The income is treated as unearned if the individual spends less than 20 hours per week managing the rental and earned income if the individual spends more than 20 hours per week managing the rental. BEM 504, p. 2. The Department counts the gross rent payment minus the allowable expenses. BEM 504, p. 3. Allowable expenses are the higher of (i) 65% of the rental payment or (ii) actual rental expenses if the landlord chooses to report and verify the expenses. BEM 504, p. 3.

The Department included \$123 in unearned rental income. The Department presented a rent receipt submitted by Petitioner for \$350 (Exhibit A, p. 1). Petitioner leased his non-homestead residence to another individual. At the hearing, Petitioner testified that he managed the property less than 20 hours per week. Therefore, the Department properly considered the income to be unearned. There was no evidence that Petitioner provided verification of actual expenses related to the property. The \$350 rent payment reduced by the standard 65% rental expense is \$123. Therefore, the Department properly calculated Petitioner's countable unearned 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 (August 2017), p. 1; BEM 556 (April 2018), p. 3.

The Department will reduce the gross countable earned income by 20 percent and is known as the earned income deduction. BEM 550, p.1. The Department correctly determined Petitioner is entitled to an earned income deduction of \$453.

The Department must determine the alien status of each non-citizen requesting benefits at application, member addition, redetermination and when a change is reported. BEM 225 (July 2017), p. 1. For FAP benefits, a person must be a U.S. citizen or have an acceptable alien status. BEM 225, p. 1. Persons who do not meet the requirement are disqualified. BEM 225, p. 1. For FAP cases, acceptable alien status includes: (i) U.S. citizens; (ii) children born to U.S. citizens born abroad that meet certain conditions; (iii) person born in Canada who are at least 50% American Indian; (iv) qualified military aliens; (v) qualified spouses and unmarried dependent children of military aliens; (vi) holder of one of the following immigration statuses: permanent resident alien with class code RE, AS, SI or SQ on the I-551 (former refugee or asylee); refugee admitted under INA Section 207; granted asylum under INA Section 208; Cuban/Haitian entrants; Amerasians under P.L. 100-202; and victims of trafficking under P.L. 106-386 of 2000. BEM 225, pp. 6-7; (vii) an alien who has been battered or subjected to extreme cruelty in the United States or whose child or parent has been battered or subjected to extreme cruelty in the United States; (viii) permanent resident alien meeting Social Security Credits; (ix) A qualified alien who was lawfully residing in the U.S. on August 22, 1996, and was 65 years of age or older on August 22, 1996; (x) a person who is lawfully residing in the U.S. and was a member of the Hmong or Highland Laotian tribe at the time that the tribe assisted U.S. personnel by taking part in a military or rescue operation during the Vietnam era; (xi) a person lawfully residing in the U.S. and disabled now; (xii) a qualified alien under 18 years of age; and (xiii) persons who have lived in the U.S. as a qualified alien for at least five years since the date of entry. BEM 225, pp. 4-12.

Petitioner's household consisted of himself, his wife and two children. However, the Department testified that Petitioner's FAP benefits were based on a group size of 3 because his wife was a disqualified alien. The Department testified that Petitioner submitted a copy of his wife's green card showing she had residency code of FX1. Petitioner's wife's entry date to the U.S. was [REDACTED], 2014. Petitioner's wife did not meet any of the elements in BEM 225 to be considered an acceptable alien status. Therefore, the Department properly determined Petitioner's wife was disqualified from the FAP group. Petitioner's FAP benefit group size of three justifies a standard deduction of \$160. RFT 255 (October 2017), p. 1.

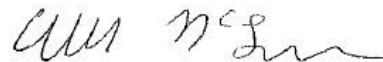
In calculating the excess shelter deduction of \$0, the Department stated that it considered Petitioner's verified housing expense of \$129.46 and that he was entitled to the heat/utility standard of \$537. BEM 554, pp. 14-15. The Department testified when calculating Petitioner's excess shelter amount they added the total shelter amount and subtracted 50% of the adjusted gross income, which resulted in a deficit. Therefore, the Department correctly determined Petitioner was not entitled to an excess shelter deduction.

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 \$1,774. As Petitioner was not entitled to an excess shelter deduction, his net income is also \$1,774. The net income limit for a group of three is \$1,702. RFT 250 (October 2017), p. 1. Therefore, the Department acted in accordance with policy when it denied Petitioner's application for FAP benefits for exceeding the net income limits.

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 Department policy when it denied Petitioner's FAP benefit application. Accordingly, the Department's decision is **AFFIRMED**.

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) 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

Via Email:

MDHHS-Wayne-23-Hearings
M. Holden
D. Sweeney
BSC4- Hearing Decisions
MAHS

Petitioner – Via First-Class Mail:

