



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: August 1, 2018
MAHS Docket No.: 18-006460
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Landis Lain

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, telephone hearing was held on July 26, 2018, from Lansing, Michigan. Petitioner was represented by herself and her spouse, [REDACTED]. The Department of Health and Human Services (Department or Respondent) was represented by Sandra Kincaid, Assistance Payments Worker.

Respondent's Exhibits 1-10 were admitted as evidence.

ISSUE

Did the Department properly determine Petitioner's Food Assistance Program (FAP) allotment 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 is a FAP benefit recipient.
2. Petitioner was receiving \$529.00 per month in FAP benefits.
3. Petitioner submitted a redetermination application on [REDACTED], 2018 and was interviewed on May 15, 2018.

4. On May 23, 2018, a verification checklist was mailed to Petitioner.
5. Petitioner returned the verification information by the due date.
6. On June 1, 2018, the department sent Petitioner notice of case action indicating that Petitioner would be approved for \$299.00 per month in FAP benefits.
7. On June 22, 2018, the Department received a request for hearing from petitioner contesting the reduction of FAP benefits.
8. On July 6, 2018, the Michigan Administrative Hearing System received the hearing summary and attached documents.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a Department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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.

Pertinent FAP policy indicates:

Federal regulations at 42 CFR 435.831 provides standards for the determination of the MA monthly protected income level. The Department follows the program reference manual, tables, charts, schedules, table 240-1.

Pertinent Department policy dictates:

Clients have the right to contest a Department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide

an administrative hearing to review the decision and determine the appropriateness. The Michigan Administrative Hearing System (MAHS) may grant a hearing for any of the following:

- Denial of an application and/or supplemental payments.
- Reduction in the amount of program benefits or service.
- Suspension or termination of program benefits or service.
- Restrictions under which benefits, or services are provided.
- Delay of any action beyond standards of promptness.
- For FAP only, the current level of benefits or denial of expedited service. Department of Human Services Bridges Administrative Manual (BAM) 600 (April 1, 2017), pp 3-4.

The client or AHR has 90 calendar days from the date of the written notice of case action to request a hearing. The request must be received in the local office within the 90 days. BAM 600, page 6

Income means a benefit or payment received by an individual which is measured in money. It includes money an individual owns even if not paid directly such as income paid to a representative. Income remaining after applying the policy in the income related items is called countable. This is the amount used to determine eligibility and benefit levels. Count all income that is not specifically excluded. BEM 500, page 1

Gross income is the amount of income before any deductions such as taxes or garnishments. This may be more than the actual amount an individual receives. BEM 500, pages 4-5

Use only available, countable income to determine eligibility. The Bridges Eligibility Manual (BEM) 500 series defines countable income. BEM 505 defines available income and income change processing. This item describes income budgeting policy.

Always calculate income on a calendar month basis to determine eligibility and benefit amounts. Use income from a month specified in this item for the benefit month being considered. Budget the entire amount of earned and unearned countable income. Every case is allowed the standard deduction shown in Reference Tables Manual (RFT) 255. Document income budgeting on either a manually-calculated or an automated FAP worksheet. (BEM 550, page 1)

Bridges converts all expenses (except one-time-only expenses the group does not wish to average) to a nonfluctuating monthly amount. The same conversion method is used to determine countable available income in BEM 505.

Bridges will convert a(n):

- Weekly expense, multiply the average weekly expense by 4.3.
- Twice a month expense, multiply the average weekly expense by 2.

(BEM 554, page 31)

In the instant case, the Department used for check stubs to determine Petitioner's income. The check stubs were in the amount of \$480.00; \$432.00; \$424.00; and \$432.00 for a total of \$1,768.00 in monthly earned income. \$1,768.00 divided by 4 equals \$442.00 in average weekly income. $\$442.00 \times 4.3 = \$1,900.00$ in monthly earned income.

Petitioner's family receives a \$1,100.00 and monthly unearned income (RSDI income).

Total income amount equals \$3,000.00 per month. Petitioner was given \$8,380.00 earned income deduction and a \$228.00 standard deduction which left her with an adjusted gross monthly income of \$2,339.00.

Petitioner was given \$925.00 in its shelter costs and \$537.00 and heat and utility standard for a total shelter expense of \$1,462.00. The Department then counted 50% of Petitioner's adjusted gross income in the amount of \$1,169.00; $\$1,462.00 - \$1,169.00 = \$293.00$ in excess shelter deduction. $\$2,339.00$ in adjusted gross income minus \$293.00 in excess shelter deduction equals a net monthly income of \$2,046.00.

The maximum food assistance program benefits for a family of six people is \$913.00 per month; \$913.00 per month minus 30% of Petitioner's net income of \$614.00 equals \$299.00 in monthly FAP benefit allotment.

Petitioner's allegation that the FAP calculation is wrong and does not leave enough FAP benefits to buy food for the entire month because of other expenses is a compelling equitable argument to be excused from the Department's program policy requirements.

Equity powers are not within the scope of authority delegated to this Administrative Law Judge pursuant to a written directive signed by the Department of Health and Human Services Director, which states:

Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations or overrule or make exceptions to the Department policy set out in the program manuals.

Furthermore, administrative adjudication is an exercise of executive power rather than judicial power and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940).

A review of Petitioner's case reveals that the Department budgeted the correct amount of income received by Petitioner at the time of determination. Petitioner's deductions and shelter allotment are governed by Food Assistance Program policy and cannot be changed by the Department or this Administrative Law Judge. If Petitioner provides the Department with information that Petitioner now receives less monthly earned income, the Department can reassess Petitioner's eligibility for increased FAP benefits.

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 has established by the necessary competent, material, and substantial evidence on the record that it was acting in accordance with Department policy when it determined that Petitioner was eligible for a \$299.00 per month in FAP benefits. The Department has established its case by a preponderance of the evidence.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.

LL/bb



Landis Lain
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

Lauren Casper
27690 Van Dyke
Warren, MI 48093

Wayne County (District 15), DHHS

BSC4 via electronic mail

M. Holden via electronic mail

D. Sweeney via electronic mail

Petitioner

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]