



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
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Date Mailed: January 9, 2019
MAHS Docket No.: 18-012460
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 January 2, 2019, from Detroit, Michigan. The Petitioner was represented by himself. The Department of Health and Human Services (Department) was represented by Garilee Janofski, Hearing Coordinator.

ISSUE

Did the Department properly calculate the Petitioner's Food Assistance (FAP) program benefits for changes reported to the Department on October 16, 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. The Petitioner was an ongoing FAP recipient based upon an application filed on August 2, 2018. (Exhibit A.)
2. The Department sent the Petitioner a Verification Checklist (VCL) on August 8, 2018, and the information was timely returned by Petitioner on August 17, 2018. At that time, the VCL information indicated that Petitioner paid no rent or utilities. (Exhibit C.)
3. The Department issued a Notice of Case Action on August 30, 2018, approving the Petitioner for \$[REDACTED] a month in FAP and \$[REDACTED] beginning September 1, 2018. (Exhibit F.)

4. On October 16, 2018, the Petitioner reported changes to the Department and that he had moved and provided a copy of the lease for his apartment. The lease established the rent in the amount of \$[REDACTED] a month and that Petitioner was to pay all utilities. The Petitioner also provided four paystubs in the amounts of \$[REDACTED] \$[REDACTED] \$[REDACTED] and \$[REDACTED]. The Petitioner confirmed the rent amount and utilities at the hearing. (Exhibit D, Exhibit E and Exhibit G.)
5. The Department processed the change information reported and updated Petitioner's case, and on October 9, 2018, issued a Notice of Case Action on November 9, 2018, increasing Petitioner's FAP benefits to \$[REDACTED] monthly based on \$[REDACTED] earned income, standard deduction of \$[REDACTED] for a group size of two and rent of \$[REDACTED] and a heat/utility allowance of \$[REDACTED] (Exhibit H.)
6. The Petitioner's FAP group consisted of Petitioner and his minor child (daughter).
7. Based upon the paystubs provided to the Department listed in paragraph 4 above, the Petitioner's earned income from employment was \$[REDACTED]
8. The Petitioner requested a timely hearing on November 13, 2018, protesting the amount of his FAP benefits.

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, the Department sent Petitioner a Notice of Case Action on October 9, 2018, stating that his FAP benefits were being increased based on current reported changes provided to the Department by Petitioner on October 16 and 18, 2018. The Department presented an income budget to establish Petitioner's benefits, which were determined to be \$[REDACTED] monthly effective November 1, 2018. The Petitioner is paid weekly and provided four paystubs to the Department as part of his changes on October 16, 2018. The paystubs for the following amounts were reviewed at the hearing and confirmed by the Petitioner as follows: for pay date September 21, 2018, the gross pay was \$[REDACTED] for pay date September 28, 2018, the gross pay was \$[REDACTED] for pay date October 5, 2018, the gross pay was \$[REDACTED] and for pay date

October 12, 2018, the gross pay reported was \$ [REDACTED] (Exhibit G, pp. 27-30.) The Petitioner also confirmed the following information during the hearing: his group size is two members, Petitioner and his daughter, minor child; and his rent was \$ [REDACTED] monthly and the lease required that he pay all utilities. (Exhibit G, pp. 31-36.)

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 (January 2016), 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 (April 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, pp. 5-7. A standard monthly amount must be determined for each income source used in the budget. BEM 505, pp. 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 \$ [REDACTED] per month based upon the paystubs and the FAP budget submitted at the hearing. Petitioner had submitted pay statements reflecting his income from employment pursuant to the change he reported. Using the paystubs submitted by Petitioner based upon the four pay dates and Petitioner being paid weekly as evidenced by the paystubs, when the four pays are added together and averages and multiplied by the 4.3 multiplier for weekly pays, it results in a total monthly gross income of \$ [REDACTED]. The average weekly pay is determined by dividing the gross pay by the number of paystubs (4) which equals average weekly pay of \$ [REDACTED] standard amount of \$ [REDACTED] which is then multiplied by 4.3 and totals \$ [REDACTED]. Thus, the Department incorrectly totaled the monthly earned income. Given this error the FAP budget must be correct and recalculated.

The deductions to income on the net income budget were also reviewed. There was evidence presented that the Petitioner's group includes an SDV member. BEM 550. 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.
- Medical deduction.
- An earned income deduction equal to 20% of any earned income.

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

The remainder of the budget items regarding deductions to income, which include the standard deduction of \$■■■■ rent of \$■■■■ and a heat/utility allowance of \$■■■■ are correct; however, the gross monthly income was incorrect as would be the Earned Income deduction shown as \$■■■■ equal to 20% of earned income that was incorrect. The Department should also consider whether the fluctuations in the Petitioner's paystubs provided as part of his change reporting are unusual in amount, and if so, determine if any pay should be discarded so that the standard monthly amount is correct. BEM 505, pp. 5-7.

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 did not act in accordance with Department policy when it miscalculated the Petitioner's earned income and earned income deduction of 20%.

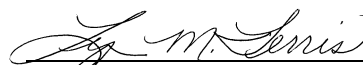
DECISION AND ORDER

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. The Department shall recalculate the Petitioner's FAP benefits beginning November 1, 2018, and include the correct monthly earned income and earned income deduction.
2. The Department shall supplement the Petitioner for FAP benefits he was otherwise entitled to receive, if any, in accordance with Department policy.
3. The Department shall provide written notice of its determination to the Petitioner.

LMFjaf/



Lynn M. Ferris

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

Lori Teal
MDHHS-Gratiot-Hearings

Petitioner

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[REDACTED] MI [REDACTED]

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M Holden
D Sweeney
L M Ferris
MAHS