



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 15, 2019
MAHS Docket No.: 18-012851
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 three-way telephone hearing was held on January 10, 2019, from Detroit, Michigan. The Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by Erin Japenga, Assistance Payments Supervisor.

ISSUE

Did the Department properly decrease the Petitioner's Food Assistance Program (FAP) benefits due to change in income?

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 is an ongoing recipient of Food Assistance Program (FAP) benefits.
2. The Petitioner was sent a Wage Match Client Notice on October 25, 2018, with a due date of November 26, 2018. On November 9, 2018, the Petitioner timely returned the notice together with six months of payments for an employer identified as [REDACTED]. (Exhibit E.)
3. A Notice of Case Action was sent on November 20, 2018, decreasing the Petitioner's FAP benefits to \$[REDACTED] a month effective January 1, 2019. (Exhibit D.)
4. The Petitioner is employed by [REDACTED] and is paid biweekly. Petitioner is a FAP group of one person and pays for electric services but not for heat. The

Petitioner also pays for her telephone. The Petitioner's rent is \$[REDACTED] monthly. (Exhibits C and D.)

5. The Department determined Petitioner's monthly gross earned income from employment to be \$[REDACTED] per month. (Exhibit D.)
6. The Petitioner requested a timely oral hearing on or about November 30, 2018, protesting the Department's decrease of her 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 received the Petitioner's wage match information and testified that it used the last 90 days of pay stubs to determine Petitioner's employment. The FAP budget the Department prepared to determine Petitioner's FAP benefits was reviewed at the hearing. The Petitioner also pays for non-heat electricity and for her phone bill. The electric bill was verified by Petitioner on December 10, 2018. The housing expenses used to calculate the FAP excess Shelter Deduction did not include the non-heat electric standard but did include a \$[REDACTED] telephone standard. (Exhibit C.) In addition, the Department computed the income based upon pay stubs for the last 90 days, covering the months of August, September and October 2018.

The following pay stubs were used to determine monthly earned income as the Petitioner's pays were fluctuating: August 10, 2018, \$[REDACTED] August 24, 2018, \$[REDACTED] September 7, 2018, \$[REDACTED] September 21, 2018, \$[REDACTED] October 5, 2018, \$[REDACTED] and October 19, 2018, \$[REDACTED] (Exhibit E.) The Department testified that the earned income from employment was calculated to be \$[REDACTED] and this amount was reflected in the FAP Edg Net Income Results (budget). (Exhibit D.)

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 gross earned income for 90 days was recalculated. The six pays in total were considered. The pays were added together and totaled \$[REDACTED] and were divided by six to get the average biweekly gross pay which was \$[REDACTED]. The average biweekly pay is then multiplied by 2.15 to determine a standard monthly amount which equaled \$[REDACTED]. This amount was \$[REDACTED] more than used by the Department; and therefore, the earned income must be recalculated as must the earned income deduction as it is based upon 20% of gross monthly income and gross income will change slightly.

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 Department will reduce the gross countable earned income by 20% and is known as the earned income deduction. BEM 550 (January 2017), p. 1. The Department incorrectly determined Petitioner is entitled to an earned income deduction of \$[REDACTED] because the earned income was not correctly calculated as stated above. Petitioner's FAP benefit group size of one, which is comprised of herself, justifies a standard deduction of \$[REDACTED]. RFT 255 (October 2016), 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.

Finally, the budget presented did not include a non-heat allowance for electricity verified by Petitioner on December 10, 2018; and thus, the adjusted excess shelter amount is

incorrect. The non-heat electric allowance is \$[REDACTED] per month. RFT 255, (October 2018), p. 1. Thus, the FAP budget presented at the hearing and the excess shelter deduction are incorrect. The Department agreed at the hearing that the non-heat allowance for electricity should have been included as a shelter expense.

The Department testified that the non-heat electricity was added to the shelter expenses and that Petitioner's benefits were increased to \$[REDACTED] monthly; however, at the time it originally decreased the FAP benefits, the budget as calculated by the Department was incorrect due to earned income as calculated by the Department and failure to provide an electricity non-heat electricity in the housing expenses.

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 calculated the housing expense and earned income eligible for earned income deduction.

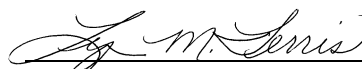
DECISION AND ORDER

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

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND COSISTENT 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 food assistance beginning January 1, 2019, to include the non-heat electric housing expense of \$[REDACTED] and recalculate the earned income to determine the correct monthly gross amount and the 20% earned income deduction.
2. The Department shall supplement the Petitioner's FAP benefits she was otherwise entitled to receive, if any, based upon its recalculation of FAP benefits in accordance with Department policy. Any supplement paid by the Department for January 2019 shall be credited by the Department as already paid.

LMF/



Lynn M. Ferris

Administrative Law Judge

for Robert Gordon, 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

Lynne Greening
MDHHS-Muskegon-Hearings

Petitioner

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