



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: January 13, 2017
MAHS Docket No.: 16-017991
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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; 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 5, 2017, from Detroit, Michigan. The Petitioner appeared for the hearing and represented himself. The Department of Health and Human Services (Department) was represented by Abby Sutter, Assistance Payment Supervisor and Stephen Kurecka, Eligibility Specialist.

ISSUE

Did the Department properly calculate the amount of Petitioner's Food Assistance Program (FAP) benefits?

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 was an ongoing recipient of FAP benefits in the amount of \$194. (Exhibit A, pp. 11-14)
2. With respect to Petitioner's previous FAP budgets, the Department considered unearned income in the amount of \$887 and applied a \$235 child support deduction to income on the budget. (Exhibit A, pp. 11-14, 17-18)
3. In connection with a redetermination, Petitioner's eligibility to receive FAP benefits was reviewed. (Exhibit B)

4. On the redetermination submitted, Petitioner reported that he receives income from Retirement Survivors Disability Insurance (RSDI) in the amount of \$887 and that he is responsible for monthly child support payments in the amount of \$243. (Exhibit B)
5. With his redetermination, Petitioner submitted a letter from the Social Security Administration (SSA) showing that beginning December 2014, his full monthly Social Security benefit before any deductions is \$887. (Exhibit A, p. 19)
6. The SOLQ provided by the Department shows that Petitioner's net monthly benefit (which is payment payable after deductions of beneficiary obligations such as child support) for the period at issue was \$887. (Exhibit A, pp. 29-31)
7. Petitioner also submitted a RSDI payment history showing a recurring payment of \$243. (Exhibit A, p. 20)
8. It was undisputed that Petitioner's monthly child support payments are automatically deducted from his monthly RSDI benefit.
9. Petitioner has confirmed housing expenses consisting of monthly rent in the amount of \$188 and is responsible for heat and utilities (h/u). (Exhibit A, p. 28)
10. On November 17, 2016, the Department sent Petitioner a Notice of Case Action advising him that effective December 1, 2016, he was approved for FAP benefits in the amount of \$77. (Exhibit A, pp. 6-9)
11. In determining Petitioner's FAP eligibility for December 2016, the Department removed the prior \$235 child support deduction from the budget and considered unearned income from RSDI in the amount of \$887. (Exhibit A, pp. 6-9, 15-16)
12. On [REDACTED], 2016, Petitioner filed a timely hearing request disputing the calculation of his FAP benefits, specifically the Department's failure to consider his monthly child support expenses.

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 requested a hearing disputing the decrease in his FAP benefits effective December 2016. The Department stated that it processed Petitioner's redetermination and updated the FAP budget to remove old and outdated medical expenses. The Department further stated that child support expenses of \$235 were removed from the updated FAP budget, as they were previously included as a deduction in error, because Petitioner's net income after the child support expenses are automatically withheld are \$887. The Department asserted that the child support was previously being considered on the budget twice, in error. The Department stated that it determined Petitioner was eligible for FAP benefits in the amount of \$77 for a group size of one.

At the hearing, the FAP EDG Net Income Results Budget for December 2016 was thoroughly reviewed to determine if the Department properly concluded that Petitioner was eligible to receive \$77 in monthly FAP benefits. (Exhibit A, pp. 15-16). Petitioner confirmed: that he had no earned income and no dependent care expenses; that his group size was one; that he had monthly housing expenses for his portion of rent in the amount of \$188; that he was responsible for heat and utilities; and that he did not recently submit medical expenses for consideration in the calculation of the medical deduction. Therefore, the budget properly did not include any deduction for earned income, dependent care or medical expenses. The budget shows that the Department properly considered the \$151 standard deduction and in calculating Petitioner's excess shelter deduction, the Department properly considered Petitioner's confirmed housing expenses of \$188 and the \$526 h/u standard. BEM 550 (October 2015), pp. 1-2; BEM 554 (June 2016), p.1; BEM 556 (July 2013), p. 3. (Exhibit A, pp. 6-9; 15-16).

It was established that at issue was the calculation of Petitioner's unearned income for FAP purposes and the Department's removal of the child support deduction. All countable earned and unearned income available to the client must be considered in determining a client's eligibility for program benefits. BEM 500 (January 2016), pp. 1-5. The Department considers the **gross** amount of money earned from RSDI in the calculation of unearned income for purposes of FAP budgeting. BEM 503 (July 2016), pp. 28-32. Gross income is the amount of income before any deductions such as taxes or garnishments. Gross income includes amounts withheld for court-ordered or voluntary child support payments. BEM 500, pp.4-5.

The Department concluded that Petitioner had unearned income from RSDI in the amount of \$887. The Department stated that rather than considering Petitioner's gross income, it considered net income of \$887, as reflected on the SOLQ because Petitioner's monthly court ordered child support expenses are withheld from his monthly RSDI benefits. However, policy requires that the Department consider gross income, not net income.

The exact amount of Petitioner's gross income from RSDI remained unclear. It was undisputed that Petitioner has child support expenses withheld from his monthly RSDI benefits and Petitioner established that his monthly child support obligation is \$243. (Exhibit A, p. 20). At redetermination, Petitioner provided the Department with a letter from the Social Security Administration (SSA) showing that beginning December 2014, his full monthly Social Security benefit before any deductions is \$887. This suggests that Petitioner's gross income, prior to the \$243 child support withholding is \$887. (Exhibit A, p. 19). The SOLQ relied on by the Department however, shows that Petitioner's net monthly benefit (which is payment payable after deductions of beneficiary obligations such as child support) for the period at issue is \$887. (Exhibit A, pp. 29-31). Based on the documentation presented for review, there is a discrepancy with respect to the exact amount of Petitioner's gross unearned income from RSDI before the monthly child support expense is deducted. Because the Department did not establish that Petitioner had gross unearned income from RSDI in the amount of \$887, the Department failed to properly calculate Petitioner's FAP eligibility. Because of the discrepancy, the Department may need to make a collateral contact with SSA or request additional verification in the form of a bank or deposit statement to ensure the best available evidence is used to confirm Petitioner's actual RSDI income.

Petitioner is eligible for a deduction to income for court ordered child support and arrearages paid to non-household members. BEM 554, p. 1, 6-7. However, the expense was not considered as a deduction to income on the December 2016 budget. The Department testified that based on the information previously on file, it determined that Petitioner's monthly child support expenses were \$235. Although the consolidated inquiry presented by the Department did not reflect Petitioner's child support obligation, Petitioner reported on his redetermination that he is responsible for monthly child support payments in the amount of \$243. (Exhibit B). Petitioner also submitted a RSDI payment history showing a recurring payment of \$243. (Exhibit A, p. 20). It was established that the Department did not send Petitioner a verification checklist or otherwise update the child support information that it had on file, as required, thus relying on inaccurate child support expense information. See BAM 130 (July 2016); BAM 210 (July 2016). Based on the above, the Department failed to establish that it properly removed the child support expense from Petitioner's FAP budget.

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 did not act in accordance with Department policy when it calculated Petitioner's FAP benefits for December 2016, ongoing.

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. Recalculate Petitioner's FAP budget for December 2016 ongoing;
2. Issue supplements to Petitioner for any FAP benefits he was eligible to receive but did not from December 1, 2016 ongoing; and
3. Notify Petitioner in writing of its decision



ZB/tlf

Zainab A. Baydoun

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

DHHS

Hearings Coordinator – Franklin – 1843
121 Franklin SE
Grand Rapids, MI
49507

Petitioner

[REDACTED]
[REDACTED]
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Via Email:

BSC3 Hearing Decisions
M. Holden
D. Sweeney
MAHS