



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR



Date Mailed: February 3, 2017
MAHS Docket No.: 17-000243
Agency No.: [REDACTED]
Petitioner: Hanan Alnaggar

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; 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 February 1, 2017, from Detroit, Michigan. The Petitioner was represented by herself. [REDACTED], Petitioner's husband, served as an Arabic interpreter for Petitioner, and also appeared as a witness. The Department of Health and Human Services (Department) was represented by Korina Littles.

ISSUE

Did the Department properly calculate and reduce the 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. The Petitioner is an ongoing recipient of FAP benefits.
2. The Department issued a Notice of Case Action dated December 1, 2016, reducing Petitioner's FAP benefits to \$573.00 monthly due to an increase in income effective December 1, 2016.
3. The Petitioner completed a Semi-Annual Contact Report on October 25, 2016, and provided wage information for Petitioner's husband for his employment at a gas station. Exhibits A and C.

4. The Petitioner provided the Department a 2015 Income Tax Return that advised that the Petitioner had gross business income of \$10,300.00 and expense of \$420.00. Exhibit B.
5. The Department included the business income reported on the tax return of \$10,300.00 and credited Petitioner with expenses of 25% of the income equaling \$2,575.00. ($\$10,300 \times 25\% = \$2,572$). The Department included gross income from the business of \$643.00 a month. Exhibits B and C.
6. The Petitioner first reported the income when the tax return was provided to the Department on November 9, 2016.
7. The Petitioner has an FAP group of six members; the group has earned income. The Petitioner's spouse owns the home they live in and pays property taxes in an annual amount of \$678.00. The Department credited tax expense of \$56.50 monthly in the FAP calculation prior to the current FAP budget, and also a heat and utility expense of \$526.00 a month was included as the group pays their heat. The total shelter expenses are \$582.50. ($\$526.00 + \$56.50 = \582.50) Exhibit E.
8. In the FAP budget for October 2016, the Department did not include property tax expense as part of the excess shelter calculation. Exhibit G.
9. The Petitioner advised the Department as part of its hearing request filed on January 10, 2017, that [REDACTED] (spouse) was no longer self-employed in the hearing request.
10. The Petitioner requested a timely hearing on January 10, 2017, protesting the Department's reduction of the 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 a Semi-Annual Contact Report from the Petitioner dated October 25, 2016, as part of an FAP review. Exhibit A. The Department also

received an Income Tax Return from the Petitioner on November 9, 2016. Exhibit B. The tax return provided to the Department was for 2015. After reviewing the tax return, the Department included business income reported on the tax return and recalculated the Petitioner's FAP benefits and reduced the benefits. Exhibit H. The Petitioner's spouse credibly testified that he was paid for home improvement work he did for another person who prepared the tax return. The Petitioner's spouse also credibly testified that he no longer did this work and advised the Department in the hearing request received January 10, 2017, that he no longer did this work. The Department presented no evidence that it sought verification of self-employment or business income when determining December 2016 income for calculating FAP benefits ongoing.

At the hearing, the Petitioner's FAP benefit budget for December 1, 2016, was reviewed; and it was determined that the Department included monthly income from self-employment of \$643.00 and monthly income from the gas station employment in the amount of \$1,096.00. Exhibits F and G. The Department did not include any property taxes when calculating the December 2016 excess shelter calculation even though it included a monthly tax expense in the prior FAP budget of \$56.50. Exhibits E, F and G. The Department could not explain why the Petitioner was not credited for property tax expense associated with the home. The Department did correctly include a heat allowance of \$526.00 as a housing expense because the Petitioner does pay for heat. The Petitioner's group size is six members and a standard deduction of \$200.00 based upon group size was used and was correct. The Petitioner's monthly earned income from the gas station was reviewed and is correct. Exhibit C and Exhibit F.

As regards the December 2016 FAP budget and calculation, it is determined that the budget is incorrect because the Department should have included the property tax credit. In addition, as explained below, the Department should have verified the self-employment income before it included self-employment income for December 2016 based upon the Petitioner's 2015 income tax return.

The Michigan Department of Health & Human Services (MDHHS) must periodically redetermine or renew an individual's eligibility for active programs. The redetermination/renewal process includes thorough review of all eligibility factors.

Redetermination, renewal, semi-annual and mid-certification forms are often used to redetermine eligibility of active programs. BAM 210 (October 1, 2016), p. 1.

A report is considered complete when all of the sections (including the signature section) on the DHS-1046 and the DHS 2240-A are answered completely **and** required verifications are returned by the client or client's authorized representative. BAM 210, p. 10.

When processing the Semi-Annual, the Department also must review the income:

The client's gross earned income from his/her most current budget is pre-filled on the DHS-1046. If the client's gross income has changed by more than \$100 from

the pre-filled amount on the form, he/she must return verification of his/her past 30 days of earnings with his/her completed DHS-1046.

If the client indicates his/her gross earned income has **not** changed by more than \$100, verification of the past 30 days is not required. However, income **must** be budgeted and EDBC run if a client checks "No" to the questions, but supplies proof of income. BAM 210, p. 11

Verification is usually required at application/redetermination **and** for a reported change affecting eligibility or benefit level. BAM 130, (October 1, 2016), p. 1

In this case, the Petitioner was required to complete a Semi-Annual Contact Report by November 1, 2016, and timely did so on October 25, 2016. A Semi-Annual Contact Report is sent at the beginning of the fifth month for cases assigned a 12-month benefit period. BAM 210 (October 1, 2016), p. 10

The Department is required to verify self-employment countable income at redetermination and is to verify income that decreases or stops. BEM 502, (July 1, 2016), p. 5. Given the fact that the Department did not verify anything about the self-employment income that was included in the Petitioner's tax return for 2015 to determine if it was ongoing or stopped, the use of the tax return to determine income for December 2016 was incorrect. Department policy provides that self-employment income may be verified as follows:

Primary source - Income tax return provided:

The client hasn't started or ended self-employment, or received an increase/decrease in income, etc.

The tax return is still representative of future income.

The client filed a tax return.

Secondary source - DHS-431, Self-Employment Statement, with all income receipts to support claimed income.

Third source - DHS-431, Self-Employment Statement, without receipts.

BEM 505 requires when calculating income for FAP the Department must:

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. BEM 505 (October 1, 2015), p. 1.

At the hearing, consistent with his hearing request statement that he is no longer self-employed, the Petitioner credibly testified that he no longer does home repair/improvement work and that he has no longer receives income from providing these services. On the Semi-Annual Contact Report, the Petitioner did not report income earned by her spouse other than employment at a gas Station. Exhibit A.

Based upon Department policy, the Department incorrectly included the self-employment income as ongoing without first verifying that the Petitioner was still self-employed.

DECISION AND ORDER

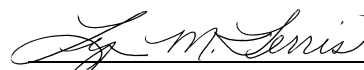
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with Department policy when it calculated the Petitioner's FAP benefits for December 2016 and when it failed to verify self-employment income and whether it was ongoing and failed to include property expense as a shelter expense.

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 must recalculate the Petitioner's FAP benefits for December 2016 and redetermine eligibility including whether income from self-employment is continuing and include property taxes when calculating shelter expenses.
2. The Department shall issue a FAP supplement, if otherwise determined to be due to Petitioner in accordance with Department policy.
3. The Department shall provide the Petitioner written notice of its determination.
- 4.

LMF/jaf



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) 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

David Garnes
12140 Joseph Campau
Hamtramck, MI 48212

Petitioner

[REDACTED]
[REDACTED], MI [REDACTED]

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