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GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

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Date Mailed: February 28, 2017
MAHS Docket No.: 17-001305
Agency No.: ██████████
Petitioner: ██████████

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 February 27, 2017, from Detroit, Michigan. The Petitioner appeared for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by Eileen Kott, Family Independence Manager.

ISSUE

Did the Department properly calculate the amount of Petitioner's Food Assistance Program (FAP) benefits effective December 1, 2016?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On or around ██████████, 2016, Petitioner submitted an application for FAP benefits. (Exhibit A, pp. 5-17)
2. On the application, Petitioner reported that: her group size was two; her husband ██████████ is employed at ██████████ and paid weekly; and that she receives monthly unearned income for disability benefits. (Exhibit A, pp. 5-17)
3. Due to agency error, the Department failed to budget the reported earned and unearned income for Petitioner's household and subsequently approved Petitioner's FAP group for monthly benefits in the amount of \$357 (the maximum

amount of FAP benefits for a group size of two) for the period of August 1, 2016, ongoing. (Exhibit A, p. 37)

4. The Department recalculated Petitioner's FAP budget and on November 5, 2016, sent Petitioner a Notice of Case Action advising her that effective December 1, 2016, her FAP benefits were being reduced to \$194, as her husband [REDACTED] was removed from the household. (Exhibit A, pp. 26-28)
5. The Department conceded that removing [REDACTED] from the household was done in error and recalculated Petitioner's FAP budget to include him as a group member. The Department also began budgeting the earned and unearned income for the household.
6. On November 15, 2016, the Department sent Petitioner a Notice of Case Action advising her that effective December 1, 2016, her FAP benefits were being decreased to \$16. (Exhibit A, pp. 29-31)
7. On [REDACTED] 2017, Petitioner requested a hearing disputing the decrease in her FAP benefits effective December 1, 2016. (Exhibit A, p. 2; Exhibit 1)

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 to dispute the decrease in her FAP benefits for the month of December 2016, ongoing. The Department testified that due to agency error, it had not been budgeting earned and unearned income for Petitioner's household and that Petitioner was approved for \$357 in error, as \$0 in income was being considered. The Department stated that after updating Petitioner's FAP budget to include the earned and unearned income and after re-adding Petitioner's husband back in the FAP group, it determined that Petitioner was eligible to receive \$16 in FAP benefits effective December 1, 2016. Petitioner confirmed that she received \$16 for the month of December 2016 and further confirmed that she requested a hearing to dispute the decrease from \$357 to \$16 effective December 2016. At the hearing, the FAP EDG

Net Income Results Budget for December 2016 was reviewed to determine if the Department properly concluded that Petitioner's FAP group was eligible to receive \$16 in monthly FAP benefits. (Exhibit A, pp. 23-25)

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 (July 2016), pp. 1-2. 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, p. 5. A standard monthly amount must be determined for each income source used in the budget. BEM 505, p. 7. 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. An employee's wages include salaries, tips, commissions, bonuses, severance pay and flexible benefit funds not used to purchase insurance. The Department counts gross wages in the calculation of earned income. BEM 501 (July 2016), pp. 6-7)

According to the budget provided, the Department concluded that Petitioner's group had earned income in the amount of [REDACTED], which it testified consisted of [REDACTED] earnings from employment at [REDACTED]. While the Department provided a Work Number detailing [REDACTED] pay dates and gross earnings, the Department could not identify which income amounts were considered and for which pay dates. Thus, the Department could not explain how it determined that Petitioner's earned income was [REDACTED]. Therefore, the Department failed to establish that Petitioner's monthly earned income was [REDACTED].

With respect to unearned income, 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. The Department concluded that Petitioner had unearned income of \$1289, which it testified consisted of her monthly RSDI (Social Security) benefit as of the date the budget was completed. Petitioner confirmed the amount and a SOLQ was presented in support of the Department's calculation. (Exhibit A, pp. 35-36). Thus, based on the figures relied upon, the Department properly calculated Petitioner's unearned income to be \$1289.

The deductions to income on the net income budget were also reviewed. Petitioner's FAP group includes a senior/disabled/veteran (SDV) member. BEM 550 (October 2015), pp. 1-2. Groups with one or more SDV members are eligible for the following deductions to income:

- Dependent care expense.
- Excess shelter.
- Court ordered child support and arrearages paid to non-household members.
- Medical expenses for the SDV member(s) that exceed \$35.
- Standard deduction based on group size.
- An earned income deduction equal to 20% of any earned income.

BEM 554 (June 2016), p. 1; BEM 556 (July 2013), p. 3.

The Department stated that Petitioner's 20% earned income deduction was \$266 and based on the [REDACTED] in earned income. However, because as discussed above the Department did not establish that it properly calculated the earned income, it follows that the earned income deduction is also incorrect. There was no evidence presented that the group had any medical expenses, out of pocket dependent care or child support expenses; therefore, the budget properly did not include any deduction for medical expenses, dependent care or child support expenses. Petitioner confirmed that her group size is two and as such, the Department properly applied the \$151 standard deduction. RFT 255 (October 2016), p. 1. In calculating Petitioner's excess shelter deduction, the Department properly considered Petitioner's confirmed housing expenses of \$660 and the \$526 h/u standard which covers all heat and utility costs, including cooling. FAP groups that qualify for the h/u standard do not receive any other individual utility standards. BEM 554, pp. 14-15.

Therefore, notwithstanding all of the proper calculations made by the Department, because the Department did not establish that Petitioner's earned income was [REDACTED], the Department failed to establish that it properly determined that Petitioner was eligible to receive \$16 in FAP benefits effective December 1, 2016.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it calculated Petitioner's FAP benefits for December 1, 2016, ongoing, in the amount of \$16.

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 1, 2016, ongoing;
2. Issue FAP supplements to Petitioner from December 1, 2016, ongoing, for any FAP benefits she was eligible to receive but did not, in accordance with Department policy; and
3. Notify Petitioner of its decision in writing.



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

Via Email:

DHHS Hearings Coordinator – 76 – 1843
BSC4 Hearing Decisions
M. Holden
D. Sweeney
MAHS

Petitioner – Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]