



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: March 23, 2017
MAHS Docket No.: 17-002348
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 March 16, 2017, from Detroit, Michigan. The Petitioner appeared for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by Lynda Brown, Hearings Facilitator.

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.
2. According to the Eligibility Summary, Petitioner was approved for FAP benefits in the amount of \$399 for November 2016 and December 2016 and \$304 for the months of January 2017 and February 2017. (Exhibit A)
3. Petitioner is employed and earning income on a biweekly basis.
4. Petitioner's two children receive monthly unearned income from Supplemental Security Income (SSI) and quarterly State SSI Payments (SSP).

5. Petitioner has confirmed monthly housing expenses consisting of monthly rent in the amount of \$700 and is responsible for heat/utility expenses.
6. On [REDACTED] 2017, Petitioner requested a hearing disputing the Department's actions with respect to 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, Petitioner requested a hearing disputing the Department's actions with respect to her FAP benefits. Petitioner asserted that her benefits had decreased from \$663 to around \$300 in May 2016. Petitioner was informed that per BAM 600, the undersigned Administrative Law Judge only had the authority to address negative actions taken by the Department within the 90 days prior to her February 22, 2017, hearing request. It was established that on February 22, 2017, Petitioner reported to the Department that her son was no longer in her home which resulted in the recalculation of her FAP budget on March 3, 2017. As a result, Petitioner's FAP benefits were reduced to \$243 effective April 1, 2017. Petitioner was advised that because this is a subsequent negative action, she was required to submit a new hearing request to have her April 2017 FAP benefits reviewed.

Petitioner clarified that at issue was the calculation of her FAP benefits for the months of November 2016, December 2016, January 2017, and February 2017. The Eligibility Summary indicates that Petitioner was approved for FAP benefits in the amount of \$399 for November 2016 and December 2016 and \$304 for the months of January 2017 and February 2017. (Exhibit A). At the hearing, the FAP EDG Net Income Results Budgets were reviewed to determine if the Department properly calculated the amount of Petitioner's FAP benefits. (Exhibit B, pp. 3-4; Exhibit C).

FAP Benefits for November/December 2016

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 bi-weekly is converted to a standard amount by multiplying the average of the bi-weekly pay amounts by the 2.15 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 \$█, which it testified consisted of Petitioner's earnings from employment. Specifically, the Department considered \$█ paid on October 13, 2016, and \$█ paid on October 27, 2016. Petitioner confirmed that the earned income amounts were correct. After further review and in consideration of the above referenced prospective budgeting policy, the Department properly calculated Petitioner's earned income.

With respect to unearned income, the Department considers the gross amount of money earned from SSI in the calculation of unearned income for purposes of FAP budgeting. BEM 503 (July 2016), pp. 28-32. State SSI Payments (SSP) are issued quarterly in the amount of \$42 and the payments are issued in the final month of each quarter; see BEM 660. The Department will count the monthly SSP benefit amount (\$14) as unearned income. BEM 503, p.33; see RFT 248 (January 2016), p. 1.

The Department concluded that Petitioner had unearned income of \$1286 which it testified consisted of SSI and SSP benefits for Petitioner's two children. The Department stated and Petitioner confirmed that in November 2016/December 2016 each of her two children received \$733 in SSI with the SSP benefit. However, after further review, based on the correct SSI and SSP figures, Petitioner's unearned income does not total \$1286 as reflected on the budget. Thus, the Department did not properly calculate Petitioner's unearned income for November 2016/December 2016.

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 properly calculated Petitioner's 20% earned income deduction to be \$63 and 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 in November 2016/December 2016 her group size was four, and as such, the Department properly applied the \$162 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 \$700 and the \$526 h/u standard. The h/u standard 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 of the errors in the calculation of unearned income, Department thus failed to establish that it properly determined that Petitioner was eligible to receive \$399 in FAP benefits for November 2016 and December 2016.

FAP Benefits for January 2017/February 2017

According to the February 2017 budget provided, the Department concluded that Petitioner's group continued to have earned income in the amount of \$■■■■, which it testified consisted of Petitioner's earnings from employment. (Exhibit B, pp. 3-4). The Department testified that it continued to rely on the previous paystubs from October 2016 because it did not receive verification of Petitioner's decreased earnings until February 21, 2017. Petitioner stated that she dropped off her January 2017 pay stubs to the Department on January 21, 2017, however, during the hearing, the Department reviewed the paystubs and it was established that the paystubs were date stamped as received by the Department on February 21, 2017. Petitioner did not have any supporting documentation to establish that she submitted her January 2017 paystubs to the Department prior to February 21, 2017, however. According to the paystubs, Petitioner was paid \$■■■■ on January 5, 2017, and \$■■■■ on January 19, 2017. Thus, because the Department received the paystubs reflecting decreased income on February 21, 2017, the Department will be required to process the reported changes and complete a new budget for the applicable months using the policy found in BEM 505 (July 2016), p. 11-12. Therefore, based on the evidence available to the Department at the time the January 2017/February 2017 budgets were completed, the Department properly relied on the old income information and determined that Petitioner had earned income of \$■■■■.

With respect to earned income, the Department concluded that Petitioner had unearned income of \$1498, which as discussed above consisted of \$735 in SSI for each of Petitioner's two children and \$14 in monthly SSP benefits. Although Petitioner confirmed that one of her son's receives gross monthly SSI of \$735 and the SSP payment, Petitioner stated that in January 2017, her other son's SSI was reduced, as \$70 is withheld from his monthly benefit due to a previous overpayment. The Department only provided one SOLQ showing the correct \$735 payment and failed to provide the SOLQ for the child whose income was in dispute. BEM 500 provides that the Department is to exclude from income amounts deducted by an issuing agency to recover a previous overpayment or ineligible payment. Thus, because the Department did not present the documentation to establish that both of Petitioner's children received \$735 in SSI for January 2017/February 2017, the Department failed to establish that Petitioner had unearned income of \$1498. All other figures on the budget including applicable deductions remained unchanged. Thus, the above discussion regarding applicable deductions applies for the months of January 2017/February 2017.

Therefore, because of the errors in the calculation of Petitioner's unearned income, the Department failed to establish that it properly calculated Petitioner's FAP benefits for November 2016, ongoing.

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.

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 November 2016, December 2016, January 2017 and February 2017;
2. Issue FAP supplements to Petitioner for November 2016, December 2016, January 2017, and February 2017 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 – 20 – 1843
BSC4 Hearing Decisions
D. Sweeney
M. Holden
MAHS

Petitioner – Via First-Class Mail:

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