



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: April 28, 2017
MAHS Docket No.: 17-003841
Agency No.: [REDACTED]
Petitioner: Arion Winters

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 April 20, 2017, from Detroit, Michigan. The Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by Juanita Munoz, Hearing Facilitator.

ISSUE

Did the Department properly decrease 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 in an ongoing FAP recipient and receives FAP in the amount of \$135.00 a month. [Exhibit 1.]
2. The Petitioner receives unearned income from Supplemental Security Income (SSI) in the amount of \$661.50 a month; and her minor son receives \$558.17 as a disabled child. [Petitioner Exhibit A.]
3. The Social Security Administration is deducting \$73.50 out of both the Petitioner's and her son's check due to an overpayment by Social Security Administration

(SSA). The amounts set forth in Finding of Fact 2 is the income **after** the overpayment is deducted.

4. The Petitioner's FAP group consists of two members and pays housing expenses of \$600.00 and received a heat and utility (h/u) allowance of \$526.00 monthly for heat and electricity. [Exhibits 1 and 2.]
5. The Department removed one of Petitioner's sons from her FAP group on March 14, 2017, at the request of Petitioner.
6. On March 27, 2017, the Petitioner requested a hearing regarding her FAP being reduced to \$135.00.

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 reduced the Petitioner's FAP benefits after a group member (her son) was removed from her FAP group at her request. At the hearing, the Department presented the Petitioner's FAP budget and excess shelter calculation, which were reviewed at the hearing.

The Petitioner presented documentation for the SSA with respect to the income received from SSA. The Petitioner receives \$661.50 in SSI and her son receives \$558.17 and is disabled. This income is **after** the SSA has withheld \$73.50 from both the Petitioner's SSA check and her son's check due to overpayment. [Petitioner Exhibit 1.] The group unearned income totals \$1,219.67. The Petitioner and her son each have \$73.50 deducted from their Social Security benefits due to overpayment. Department policy provides the following with respect to the treatment of overpayments that are deducted from the issuing agency:

Reduced Benefits Due to Overpayment

Amounts deducted by an issuing agency to recover a previous overpayment or ineligible payment **are not part of gross income**. These amounts are excluded as income.

Exceptions: The following overpayment amounts **must** be included in gross income:

- Any portion of an overpayment (that is normally countable) if the original payment was excluded income when received.
- Cash assistance recoupment amounts due to Intentional Program Violation (IPV) are automatically counted for FAP in Bridges.
- Supplemental Security Income (SSI) amounts recouped due to IPV are included in countable gross income for cash assistance programs and FAP.

IPV means there is a finding of fraud or an agreement to repay in lieu of prosecution. Do not exclude recouped SSI when IPV information is volunteered by the SSI recipient or other reliable source. Do not initiate any contacts to obtain this information. BEM 500, (January 1, 2016), p. 6.

At the hearing, it could not be determined, based upon the evidence presented, how the Department determined the Petitioner's unearned gross income as the total of the group SSA benefits received was \$1,219.67. The Department determined the countable unearned income to be \$1,394. [Exhibit 1.] The Department testified that the overpayment amount was included but was uncertain how the total FAP countable income was determined. The overpayment amount should not have been included, **unless** one of the exceptions referenced in BEM 500 were present. No evidence of any exception being met was presented by the Department at the hearing; thus, the FAP budget as presented must be recalculated; and the Department must determine if the overpayment amounts for the Petitioner and her son should be included or excluded based upon the Department policy found in BEM 500 and should discuss the matter further with the Petitioner.

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 the Petitioner's gross countable unearned income.

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 shall recalculate the Petitioner's FAP benefits and redetermine the unearned countable gross income in accordance with Department policy.

2. The Department shall issue a FAP supplement to the Petitioner if Petitioner is otherwise eligible in accordance with Department policy.

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

Petitioner

[REDACTED], MI

DHHS

Wayne (41)

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