



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON  
DIRECTOR



Date Mailed: September 15, 2017  
MAHS Docket No.: 17-010596  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Ellen McLemore**

**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; 42 CFR 438.400 to 438.424; 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 September 14, 2017, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Lynda Brown, Hearing Facilitator, and Terry Glenn, Family Independence Specialist.

**ISSUE**

Did the Department properly decrease 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 is an ongoing FAP recipient.
2. The Department sent Petitioner a Notice of Case Action on April 7, 2017, notifying her that her FAP benefits were being reduced, effective May 1, 2017 (Exhibit C pp. 1-2).
3. The Department sent Petitioner a Health Care Coverage Determination Notice on April 7, 2017.
4. The Department sent Petitioner a Notice of Case Action on August 2, 2017, notifying Petitioner that her FAP benefit case was being closed, effective September 1, 2017, (Exhibit A, pp. 1-2).

5. Petitioner submitted a Request for Hearing on August 7, 2017, disputing the Department's actions on her FAP and Medical Assistance (MA) cases.

### **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).

#### **MA**

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

On August 7, 2017, Petitioner submitted a Request for Hearing regarding her MA benefits. The Department's most recent action taken on Petitioner's MA case, prior to the request for hearing, was a Health Care Coverage Determination Notice that was issued on April 7, 2017. Policy provides that a request for hearing must be received in the Department local office within 90 days of the date of the written notice of case action. BAM 600 (April 2017), p. 6. Because Petitioner's hearing request was not made within 90 days of the Department's action regarding her MA case, it is, therefore, dismissed for lack of jurisdiction.

#### **FAP**

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.

Petitioner requested a hearing regarding her FAP case closure, as well as her FAP benefit reduction on August 7, 2017. On August 2, 2017, the Department sent Petitioner a Notice of Case Action informing her that her FAP benefit case was being closed, effective September 1, 2017. However, the Department conceded the closure was in error and Petitioner experienced no interruption in benefits. Petitioner acknowledged that was correct. Therefore, the issue of the closure of Petitioner's FAP benefit case will not be addressed, as it is a moot issue.

On April 7, 2017, the Department sent Petitioner a Notice of Case Action stating that her benefits were being reduced, effective May 1, 2017. Petitioner's August 7, 2017 request for hearing was made, in part, to address the reduction of her benefits. A request for a hearing must be submitted within 90 days from the date of the written notice of case action. BAM 600, p. 6. However, an exception applies to FAP cases and a request for a hearing disputing the current level of benefits may be made any time within the benefit period. BAM 600, p. 7. "Current" is interpreted to refer to the client's eligibility as of the hearing request month. Based on Petitioner's hearing request submission from August 7, 2017, Petitioner may dispute August 2017 FAP eligibility ongoing.

All countable earned and unearned income available to the client must be considered in determining a client's eligibility for program benefits. 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 (April 2017), 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, pp. 5-6. The Department can use income from the past 60 or 90 days for fluctuating or irregular income if; the past 30 days is not a good indicator of future income and the fluctuations of income during the past 60 or 90 days appear to accurately reflect the income that is expected to be received in the benefit month. BEM 505, p. 6.

A standard monthly amount must be determined for each income source used in the budget. BEM 505, pp. 7-8. Income received biweekly is converted to a standard amount by multiplying the average of the biweekly pay amounts by the 2.15 multiplier. 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. BEM 501 (July 2017), p. 6. The Department counts gross wages in the calculation of earned income. BEM 501, p. 7.

The Department testified Petitioner's earned income was determined to be \$2,408 monthly, which was reflected in the April 7, 2017 Notice of Case Action. The Department stated it relied on pay stubs submitted by the Petitioner to calculate her earned income. The Department stated it was uncertain as to which pay statements it used to calculate Petitioner's earned income. The Petitioner submitted pay stubs in the amounts of \$440 issued on February 24, 2017, \$1,120 issued on March 10, 2017, \$480 issued on April 7, 2017, and \$480 issued on April 21, 2017.

The Department testified it was unsure how Petitioner's earned income was calculated, but it is evident that the Department used Petitioner's pay statement from March 10, 2017, in the amount of \$1,120, and multiplied the number by the 2.15 multiplier. Petitioner's FAP benefit amount was determined to be \$16 per month based, in part, on Petitioner's calculated monthly earned income of \$2,408. Petitioner received a monthly

amount of \$16 in FAP benefits from May 2017 through the month of August 2017, when the hearing request was made.

Per policy, when 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, pp. 5-6. Based on all of the pay statements submitted by Petitioner, the Department failed to establish that it correctly calculated Petitioner's earned income from employment. The March 10, 2017 pay statement in the amount of \$1,120 is much higher than the remaining pay statements submitted by the Petitioner. The Department should have considered that pay stub as unusual and disregarded it when calculating Petitioner's earned income from employment. Because the Department failed to establish that it properly calculated Petitioner's earned income, the Department failed to establish that it properly calculated Petitioner's FAP benefits in the amount of \$16 for the month of August 2017, ongoing.

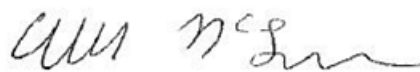
### **DECISION AND ORDER**

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 regarding the amount of Petitioner's FAP benefits is **REVERSED**.

Because Petitioner did not timely request a hearing regarding her MA case, the Request for Hearing regarding the matter is, hereby, **DISMISSED**.

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 benefits for August 2017, ongoing;
2. If Petitioner is eligible for FAP benefits, issue supplements for any FAP benefits she was eligible to receive but did not from August 2017, ongoing; and
3. Notify Petitioner of its FAP decision in writing.



EM/jaf

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**Ellen McLemore**  
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**

MDHHS-Macomb-20-Hearings

**Petitioner**



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