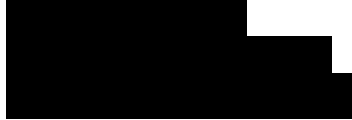




RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
DETROIT

SHELLY EDGERTON
DIRECTOR



Date Mailed: October 11, 2017
MAHS Docket No.: 17-011623
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 October 9, 2017, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Kathleen Scorpio-Butina, Hearing Facilitator.

ISSUE

Did the Department properly calculate Petitioner's Food Assistance Program (FAP) benefit amount?

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 Department recalculated Petitioner's FAP eligibility and determined Petitioner's benefit amount to be \$269 effective September 1, 2017, ongoing.
2. Petitioner was a member of a FAP group size of five which included herself and her four children.
3. At the time of the application for benefits, Petitioner had earned income from employment.
4. Petitioner had unearned income which comprised of her \$844 monthly payment of Retirement, Survivors, and Disability Insurance (RSDI) benefits (Exhibit D, pp

- 1-3). Petitioner's four children also received a monthly RSDI payment of \$36 each (Exhibit D, pp. 4-15).
5. Petitioner also had unearned income in the form of child support payments for one of her children (Exhibit C).
6. On August 31, 2017, Petitioner submitted a request for hearing disputing the Department's actions regarding the amount of benefits she was to receive.

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 submitted an application for FAP benefits on [REDACTED], 2017. At that time, Petitioner was still employed at [REDACTED]. 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. 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 presented a Work Number report from Petitioner's employment at Macy's (Exhibit B). The Department testified when calculating Petitioner's gross monthly earned income of \$750, it used the payments that were issued on August 25, 2017, in

the amount of \$121.95; August 18, 2017, in the amount of \$242.55; August 4, 2017 in the amount of \$240.12; and July 28, 2017 in the amount of \$107.73. Petitioner was paid weekly. Upon further review of the income amounts considered by the Department and in consideration of the prospective budgeting policy referenced above, Petitioner's total earned income does not equal \$750. Thus, the Department did not establish that it properly calculated Petitioner's daughter's earned income.

The Department also included Petitioner's unearned income from her RSDI benefits that it retrieved from the State Online Query (SOLQ) in the amount of \$884 per month, as well as Petitioner's four children's RSDI benefits in the amount of \$36 each. The Department also included child support income that Petitioner received for one of her children (Exhibit C). The Department testified it calculated Petitioner's monthly child support income to be \$236 per month. The Department presented evidence that Petitioner received a payment for the month of May 2017 in the amount of \$344.29; June 2017 in the amount of \$363.72; and July 2017 in the amount of \$353.45.

When calculating child support income, the Department uses the monthly average of the child support payments received in the past three calendar months, unless changes are expected. BEM 505, p. 4. If there are known changes that will affect the amount of the payments in the future, the Department will not use the previous three months. BEM 505, p. 4. If the past three months' child support is not a good indicator of future payments, the Department will calculate an expected monthly amount for the benefit month based on available information and discussion with the client. BEM 505, p. 5. The Department was unable to provide any testimony as to how Petitioner's monthly child support income was calculated. It is evident the Department did not average the three months previous to application. Therefore, the Department failed to establish that it properly calculated Petitioner's child support income and Petitioner's unearned income as a whole.

In this case, because the Department failed to establish that it properly calculated Petitioner's earned and unearned income, it follows that the FAP benefit amount of \$269 per month was also not properly calculated. Therefore, the Department failed to establish that it followed policy when determining Petitioner's FAP benefit amount.

DECISION AND ORDER

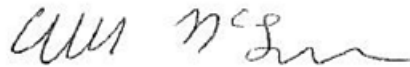
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined Petitioner's FAP benefit amount.

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 eligibility as of September 1, 2017, ongoing;
2. If Petitioner is eligible for FAP benefits, issue supplements to Petitioner for any FAP benefits she was eligible to receive but did not from September 1, 2017, ongoing; and
3. Notify Petitioner of its FAP decision in writing.



EM/jaf

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



BSC4
M Holden
D Sweeney
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