



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

Date Mailed: October 24, 2017  
MAHS Docket No.: 17-011947  
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 23, 2017, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Tamra Pilkinton, Eligibility Specialist, and Sue Cook, Family Independence Manager.

**ISSUE**

Did the Department properly deny Petitioner's application for 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. On [REDACTED], 2017, Petitioner submitted an application for FAP benefits (Exhibit B).
2. In the application, Petitioner indicated her household consisted of herself, one child that lived with her full-time and another child that lived with her part-time.
3. Petitioner had earned income from employment.
4. Petitioner received child support payments for the child that lived with her full-time.
5. On September 7, 2017, the Department sent Petitioner a Notice of Case Action informing her that her application for FAP benefits was denied.

6. On September 7, 2017, Petitioner verbally requested a hearing to dispute the Department's actions.

### **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. Petitioner indicated she had two children living in her home. One of the children lived with her full-time and the other lived with her part-time. Petitioner informed the Department that the child that lived with her part-time stayed with her 14 days per month. The Department determined that Petitioner was not the primary caretaker of the child, as the child lived with Petitioner less than half of the time. As a result, the child was excluded from Petitioner's FAP group.

When a child spends time with multiple caretakers who do not live together such as joint physical custody, parent/grandparent, etc., the Department must determine the primary caretaker. BEM 212 (January 2017). p. 3. Only one person can be the primary caretaker and the other caretaker(s) is considered the absent care-taker(s). BEM 212, p. 3. The child is always in the FAP group of the primary care-taker. BEM 212, p. 3. The Department determines which parent is the primary caretaker by the number of days the child sleeps in his/her home. BEM 212, p. 4. If the child spends virtually half of the days in each month, averaged over a twelve-month period with each caretaker, the caretaker who applies and is found eligible first, is the primary caretaker. BEM 212, p. 4. The other caretaker(s) is considered the absent caretaker(s). BEM 212, p. 4.

Petitioner testified that the child lives with her 50% of the time. Petitioner and the child's father switch custody of the child every other week. Petitioner indicated that she had the child 14 days per month because she just multiplied two 7-day periods, not realizing that most months have more than 28 days.

Although Petitioner gave credible testimony that her child lives with her 50% of the time, she informed the Department the child lives with her only 14 days per month. As 14 days per month is less than 50% of the year, the Department correctly concluded that Petitioner was not the primary caretaker of the child, and therefore, properly excluded the child from the FAP group.

The Department testified it denied Petitioner's application for FAP benefits because her group exceeded the net income limit. The Department presented a FAP budget to establish Petitioner's group exceeded the net income limit (Exhibit C).

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), p. 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), p. 1. 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. 5-7. A standard monthly amount must be determined for each income source used in the budget. BEM 505, pp. 8-9. Income received twice per month is added together. BEM 505, p. 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.

The Department testified Petitioner had unearned income in the amount of \$206 per month which comprised of child support payments for one of Petitioner's children. The Department testified Petitioner received a child support payment of \$186 in August 2017 and no payments in the months previous to August 2017.

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 therefore, Petitioner's net income as a whole. Thus, the Department failed to establish it followed policy when it denied Petitioner's application for exceeding the net income limit.

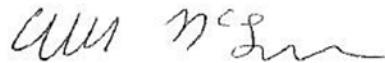
### **DECISION AND ORDER**

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 denied Petitioner's application for 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. Reregister and reprocess Petitioner's [REDACTED] 2017 application for FAP benefits;
2. If Petitioner is eligible for FAP benefits, issue supplements to Petitioner for any FAP benefits she was eligible to receive but did not as a result of the application denial;
3. Notify Petitioner of its FAP decision in writing.



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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-Jackson-Hearings

**Petitioner**



BSC4  
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