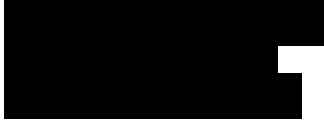




RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR



Date Mailed: October 20, 2017
MAHS Docket No.: 17-012069
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 17, 2017, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Susan Engel, Hearing Facilitator.

ISSUE

Did the Department properly calculate 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. On July 24, 2017, Petitioner submitted a Semi-Annual Contact Report and reported new income (Exhibit B).
3. Petitioner had income through the State of Michigan as a home health provider and as a Child Development and Care (CDC) provider.
4. On August 11, 2017, the Department sent Petitioner a Notice of Case Action informing her that her FAP benefits were being decreased to \$118 per month effective September 1, 2017, ongoing.

5. On September 8, 2017, Petitioner submitted a request for hearing disputing 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 a Semi-Annual Contact Report on July 24, 2017. Petitioner had previously been employed as an adult home health provider through the State of Michigan. In the Semi-Annual, Petitioner reported that she was now receiving income through the State of Michigan as a CDC provider, in addition to her income as an adult home help provider. As a result, the Department recalculated Petitioner's FAP benefits and determined she was entitled to \$118 per month effective September 1, 2017, 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 retrieved a consolidated inquiry report for Petitioner's two sources of income through the State of Michigan (Exhibit D). The Department calculated Petitioner's monthly income from employment to be \$3,625. The Department conceded Petitioner's income was calculated incorrectly. Petitioner was paid on a monthly basis for her services as a home health provider. Petitioner was paid \$455.41 per month. The Department correctly determined Petitioner's income from her employment as a home health provider to be \$455.41 per month. For Petitioner's income as a CDC provider, the Department testified it used the pay amounts issued on June 22, 2017, in the amount of \$1,474.50; July 6, 2017 in the amount of \$1,474.50; August 17, 2017, in the amount of \$1,607; and August 31, 2017, in the amount of \$0. Petitioner was paid on a biweekly basis. After determining Petitioner's income as a CDC provider and adding it to her income as a home health provider, the income amount does not result in a monthly standard income of \$3,625. The Department could not provide testimony as to how the figure of \$3,625 was calculated. Additionally, the Department testified Petitioner's income as a CDC provider should not have been calculated as earned income, but rather, as self-employment income.

Upon further review and based on the evidence presented, the Department did not establish that it properly calculated Petitioner's income. Therefore, Department failed to establish that it properly calculated Petitioner's FAP benefits in the amount of \$118 per month, effective September 1, 2017, ongoing.

DECISION AND ORDER

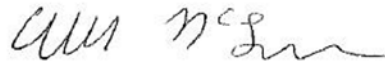
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it calculated Petitioner's FAP benefit 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 budget for September 1, 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 September 1, 2017, ongoing.

3. Notify Petitioner of its FAP decision in writing.



EM/

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-Saginaw-Hearings

Petitioner



BSC4
M Holden
D Sweeney
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MAHS