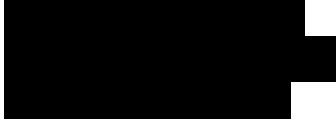




RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

SHELLY EDGERTON
DIRECTOR



Date Mailed: November 2, 2017
MAHS Docket No.: 17-012872
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 November 2, 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.

ISSUE

Did the Department properly determine 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. Petitioner was an ongoing FAP benefit recipient.
2. On [REDACTED], 2017, Petitioner submitted a request for State Emergency Relief (SER) benefits. Pursuant to the application, Petitioner was required to submit verification of her daughter's income from employment.
3. On September 12, 2017, the Department sent Petitioner a Notice of Case Action informing her that her FAP benefits were being reduced effective September 1, 2017, ongoing, to \$295 per month.
4. On September 26, 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, the Petitioner had submitted an application for SER benefits. Pursuant to the application, Petitioner was required to submit verification of her daughter's income from employment. At some point, the Department closed Petitioner's FAP benefit case effective September 1, 2017, ongoing. However, the Department could not locate a Notice of Case Action informing Petitioner of the closure. On September 12, 2017, the Department sent Petitioner a Notice of Case Action informing her that her FAP benefits had decreased effective September 1, 2017, to \$295 per month. Petitioner submitted a hearing request to dispute the Department's decision to close her FAP benefit case and the amount of FAP benefits that she was entitled to receive.

Petitioner never experienced a lapse in benefits. In August 2017, Petitioner received \$771 in FAP benefits. In September 2017, Petitioner received \$295 in FAP benefits for the period of September 1, 2017, through September 30, 2017. Therefore, the issue of the case closure is moot and will not be addressed.

The Department presented a FAP budget for September 2017 to establish how Petitioner's FAP benefits were calculated (Exhibit B). At the time, Petitioner's FAP group consisted of herself and her four children. One of her daughters had income from employment. The Department determined the group's earned income was \$1,110.

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), 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. 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. The Department counts gross wages in the calculation of earned income. BEM 501 (July 2016), pp. 6-7.

The Department testified it calculated Petitioner's daughter's income from employment by using check stubs that were previously submitted. However, the Department was unable to locate any check stubs and could not provide any testimony as to what payment amounts were used calculate the earned income. Therefore, the Department failed to establish that it followed policy when determining Petitioner's daughter's income from employment. Thus, the Department failed to establish it followed policy when determining Petitioner's FAP benefit amount.

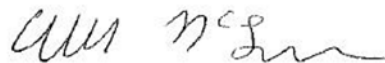
DECISION AND ORDER

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 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. Redetermine Petitioner's FAP eligibility as of September 1, 2017, ongoing;
2. If Petitioner is eligible for additional FAP benefits, issue supplements 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
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