



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: December 15, 2017
MAHS Docket No.: 17-014723
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, an in-person hearing was held on December 13, 2017, from Detroit, Michigan. Petitioner was present with her husband, [REDACTED]. Petitioner was also present with [REDACTED], Child Health Advocate. The Department of Health and Human Services (Department) was represented by Carvin Wright, Eligibility Specialist, and Cheryl Watkins, Assistance Payments Supervisor.

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 recipient.
2. On September 12, 2017, Petitioner submitted a completed redetermination (Exhibit 1).
3. Petitioner was a member of a FAP group that included herself, her husband, and her two minor children.
4. Petitioner's husband had income from his employment as an [REDACTED].
5. On October 3, 2017, the Department sent Petitioner a Verification Checklist (VCL) requesting verification of Petitioner's husbands wages for the previous 30 days (Exhibit B).

6. On October 5, 2017, Petitioner submitted her husband's tax records from 2016 (Exhibit C).
7. On November 1, 2017, the Department sent Petitioner a Notice of Case Action informing her that her FAP benefits had been approved in the amount of \$24 per month effective October 1, 2017, ongoing (Exhibit D).
8. On November 7, 2017, Petitioner requested a 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 requested a hearing to dispute the Department's determination of her FAP benefit amount. Specifically, Petitioner contended the Department did not accurately calculate her husband's income. The Department presented a FAP budget to establish the calculation of Petitioner's FAP benefits (Exhibit E).

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 (July 2017), pp. 1-5. The Department determines a client's eligibility for program benefits based on the client's actual income and/or prospective income. The Department makes a determination as to whether an individual's income is from employment or self-employment. Individuals who run their own businesses are self-employed. BEM 502 (July 2017), p. 1. S-Corporations and Limited Liability Companies (LLCs) are not self-employment. BEM 502, p. 1. When determining if an individual is self-employed, the Department considers certain factors including: (i) if the individual sets his/her own hours (ii) the individual provides his/her own tools for the job (iii) the individual is responsible for the service being provided and for the methods used to provide the service; and (iv) the individual collects payment for the services provided from the individual paying for them. BEM 502, pp. 1-2.

The Department testified that it determined Petitioner's husband's income was income from employment, as opposed to self-employment income, because [REDACTED] is an LLC. The Department cited to language in BEM 502 stating that LLCs are not self-

employment, as cited above. However, this is a misinterpretation of the language in the policy. That language references a scenario where the client maintains an S-Corporation or LLC. The Department's determination that Petitioner's husband had income from employment based on [REDACTED] status as an LLC was incorrect. Petitioner testified he is not a member of an LLC.

Petitioner's husband argued that he was self-employed. Petitioner's husband testified that he incurs expenses as an [REDACTED] driver, such as costs for gas and maintaining his vehicle, which he utilizes in his employment as an [REDACTED] driver. The Department failed to introduce evidence that it considered any of the factors set forth in policy to determine whether Petitioner was self-employed or had income from employment. Therefore, the Department failed to establish it properly calculated Petitioner's husband's income, as the circumstances suggest Petitioner's husband was self-employed and the Department failed to introduce evidence to rebut Petitioner's husband's assertion that he was self-employed. As the Department failed to establish it correctly calculated Petitioner's husband's income, it follows the Department also did not properly calculate Petitioner's FAP benefit amount.

DECISION AND ORDER

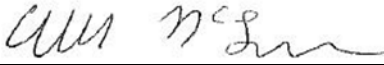
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined Petitioner's FAP benefit 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. Redetermine Petitioner's FAP eligibility as of October 1, 2017, ongoing;
2. If Petitioner is eligible for additional FAP benefits, issue supplements Petitioner was entitled to receive but did not as of October 1, 2017, ongoing; and
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-Washtenaw-Hearings

Petitioner



BSC4
M Holden
D Sweeney
E McLemore
MAHS