



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: December 20, 2017
MAHS Docket No.: 17-015005
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Eric J. Feldman

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 December 18, 2017, from Lansing, Michigan. Petitioner was present for the hearing and represented herself. [REDACTED], Petitioner's daughter, testified as a witness for Petitioner. The Department of Health and Human Services (Department) was represented by Lavonne Harvey, Eligibility Specialist; and Kelly Hudson, Family Independence Manager.

ISSUE

Did the Department properly calculate Petitioner's Food Assistance Program (FAP) allotment effective December 1, 2017?

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 is an ongoing recipient of FAP benefits.
2. Back on August 1, 2016, Petitioner submitted a delinquent tax notice for 2015, which showed she owed \$4,088.22 in property taxes as of August 31, 2016. [Exhibit A, p. 7.]
3. After submitting the delinquent tax notice, the Department budgeted \$4,088.22 monthly for her property taxes. [Exhibit A, p. 23.]

4. On August 21, 2017, Petitioner submitted a summer past due property tax statement, which showed she owed \$1,527.96 in property taxes as of August 17, 2016. [Exhibit A, p. 8.]
5. On October 31, 2017, an Office of Inspector General (OIG) Front-End Eligibility (FEE) is processed and the OIG agent discovered that the Department had been improperly budgeting \$4,088.22 for her monthly property taxes. The OIG agent indicated that her yearly property taxes are \$1,527.96, which is \$127.33 per month. [Exhibit A, pp. 1 and 6.]
6. On October 31, 2017, the Department sent Petitioner a Notice of Case Action notifying her that her FAP benefits would decrease to \$71 effective December 1, 2017 because her shelter deduction amount had changed. The Notice of Case Action indicated her monthly property taxes being budgeted is \$127.33. [Exhibit A, pp. 17-18.]
7. On November 13, 2017, Petitioner submitted a hearing request, protesting her FAP allotment. [Exhibit A, pp. 3-4.]
8. On November 21, 2017, the Department spoke to Petitioner concerning her FAP budget and she informed the Department that she no longer receives in-home rental income that it had been budgeting. [Exhibit A, pp. 1, 19, and 21.]
9. The Department removed the in-home rental income.
10. On November 27, 2017, the Department sent Petitioner a Notice of Case Action notifying her that her FAP benefits increased to \$150 effective December 1, 2017, due to the removal of the in-home rental income. [Exhibit A, p. 20.]

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.

Preliminary matter

On October 31, 2017, the Department sent Petitioner a Notice of Case Action notifying her that her FAP benefits would decrease to \$71 effective December 1, 2017. [Exhibit A, pp. 17-18.] As a result, Petitioner submitted a hearing request on November 13, 2017, protesting her FAP allotment. [Exhibit A, pp. 3-4.] But then, the Department again recalculated her FAP allotment and sent Petitioner another Notice of Case Action on November 27, 2017, informing her that her FAP benefits increased \$150 effective December 1, 2017. [Exhibit A, p. 20.] Petitioner testified that she is ultimately disputing the calculation of her FAP benefits in the amount of \$150. As a result, the undersigned will review below whether the Department properly calculated Petitioner's FAP allotment in the amount of \$150 effective December 1, 2017.

FAP allotment

In the present case, the undersigned reviewed the FAP budget from December 2017 in the present matter. [Exhibit A, pp. 24-25.]

First, it was not disputed that the certified group size is two and that Petitioner is a senior/disabled/disabled veteran (SDV) member. [Exhibit A, pp. 24-25.]

Next, the Department calculated Petitioner's gross unearned income to be \$1,051, which she did not dispute. [Exhibit A, pp. 24-25.]

Then, the Department applied the \$160 standard deduction applicable to Petitioner's group size of two. [Exhibit A, p. 24 and RFT 255 (October 2017), p. 1.] Petitioner also did not dispute that the dependent care, medical deduction, and child support deductions were calculated as zero. [Exhibit A, p. 24.]

Once the Department subtracts the \$160 standard deduction from gross unearned income of \$1,051, this results in an adjusted gross income of \$891. [Exhibit A, p. 24.]

Also, the Department presented the FAP – Excess Shelter Deduction budget (shelter budget), which indicated that Petitioner's monthly housing expense is \$127.33. [Exhibit A, p. 26.] Specifically, this amount comprised of the average monthly property taxes that Petitioner incurs. Back on August 1, 2016, Petitioner submitted a delinquent tax notice for 2015, which showed she owed \$4,088.22 in property taxes as of August 31, 2016. [Exhibit A, p. 7.] As stated in the *Findings of Facts*, on October 31, 2017, the OIG agent discovered that the Department had been improperly budgeting \$4,088.22 for her monthly property taxes. [Exhibit A, pp. 1 and 6.] Therefore, the OIG agent indicated that her yearly property taxes are \$1,527.96, which is \$127.33 per month. [Exhibit A, pp. 1 and 6.] As a result, the Department recalculated Petitioner's FAP budget and began budgeting \$127.33 as her monthly average in property taxes. [Exhibit A, p. 26.]

In response, Petitioner disputed the calculation of her property taxes. She testified that she is delinquent in taxes and she pays \$2,600 in yearly property taxes. Petitioner

testified that she has a court order in which a payment plan was set-up and she pays \$350 per month in property taxes. She testified that she is making these payments to avoid eviction or foreclosure. Petitioner testified that she has not provided any verification to the Department showing that she is obligated to pay \$350 per month in property taxes because it was never asked for by the Department.

The Department testified that that the last verification it received from Petitioner concerning her property taxes was on August 21, 2017, which showed she owed \$1,527.96 in property tax. [Exhibit A, p. 8.] As such, the Department argued that it relied on this property tax statement to budget the \$127.33 in monthly property taxes that she is responsible for. [Exhibit A, p. 26.]

The Department allows a shelter expense when the FAP group has a shelter expense or contributes to the shelter expense. BEM 554 (August 2017), p. 13. Do not prorate the shelter expense even if the expense is shared. BEM 554, p. 13. Shelter expenses are allowed when billed. BEM 554, p. 13. The expenses do not have to be paid to be allowed. BEM 554, p. 13.

Late fees and/or penalties incurred for shelter expenses are not an allowable expense. BEM 554, p. 13.

Housing expenses include rent, mortgage, a second mortgage, home equity loan, required condo or maintenance fees, lot rental or other payments including interest leading to ownership of the shelter occupied by the FAP group. BEM 554, p. 13.

The expense must be a continuing one. BEM 554, p. 13. Payments that exceed the normal monthly obligation are not deductible as a shelter expense unless the payment is necessary to prevent eviction or foreclosure, and it has not been allowed in a previous FAP budget. BEM 554, p. 13. Additional expenses for optional charges, such as carports, pets, etc. are not allowed. BEM 554, p. 13.

Property taxes, state and local assessments and insurance on the structure are allowable expenses. BEM 554, p. 14. Do not allow insurance costs for the contents of the structure, for example, furniture, clothing and personal belongings. BEM 554, p. 14.

The Department verifies shelter expenses at application and when a change is reported. BEM 554, p. 14. If the client fails to verify a reported change in shelter, remove the old expense until the new expense is verified. BEM 554, p. 14. The Department verifies the expense and the amount for housing expenses, property taxes, assessments, insurance and home repairs. BEM 554, p. 14.

Based on the foregoing information and evidence, the Department properly calculated Petitioner's shelter expense (property taxes) effective December 1, 2017. The undersigned agrees with the Department's argument that the last verification it received from Petitioner concerning her property taxes was on August 21, 2017, which showed she owed \$1,527.96 in property tax. [Exhibit A, p. 8.] As such, the Department properly relied on this property tax statement to budget the \$127.33 in monthly property taxes

that she is responsible for in accordance with Department policy. [Exhibit A, p. 26 and see BEM 554, pp. 13-14.] Petitioner claims that she pays \$350 in monthly property taxes via a payment arrangement made through the court. However, Petitioner acknowledged that she has not provided proof to the Department showing this payment obligation. And furthermore, Petitioner failed to show that she reported such a change to the Department. See BAM 105 (October 2017), p. 12 (Other changes must be reported within 10 days after the client is aware of them). It should be noted that Petitioner can attempt to report and submit verification of her alleged payment arrangement of her property taxes, which could result in an increase in FAP benefits.

The Department also provided Petitioner with the \$537 mandatory heat and utility (h/u) standard, which encompasses all utilities (water, gas, electric, telephone) and is unchanged even if a client's monthly utility expenses exceed the \$537 amount. [Exhibit A, p. 26; BEM 554, pp. 14-16; and RFT 255, p. 1.]

Furthermore, the total shelter obligation is calculated by adding Petitioner's housing expenses (property taxes) to the utility credit; this amount is found to be \$664. [Exhibit A, p. 26.] Then, the Department subtracts the total shelter amount from fifty percent of the \$891 adjusted gross income. [Exhibit A, p. 24.] Fifty percent of the adjusted gross income is \$445. [Exhibit A, p. 26.] When the Department subtracts the total shelter amount from fifty percent of the gross income, the excess shelter amount is found to be \$219. [Exhibit A, p. 26.]


The Department then subtracts the \$891 adjusted gross income from the \$219 excess shelter deduction, which results in a net income of \$672. [Exhibit A, pp. 24-25.] A chart listed in RFT 260 is used to determine the proper FAP benefit issuance. Based on Petitioner's group size and net income, the Department properly determined that Petitioner's FAP benefit issuance is found to be \$150 effective December 1, 2017. RFT 260 (October 2017), p. 9.

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 acted in accordance with Department policy when it properly calculated Petitioner's FAP allotment effective December 1, 2017.

Accordingly, the Department's FAP decision is **AFFIRMED**.

EF/nr


Eric J. Feldman
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

Theresa Ergang
121 Franklin SE
Grand Rapids, MI
49507

Kent County DHHS- via electronic mail

BSC3- via electronic mail

M. Holden- via electronic mail

D. Sweeney- via electronic mail

Petitioner

A large black rectangular redaction box covering the name and contact information of the petitioner.