



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: January 17, 2018
MAHS Docket No.: 17-015510
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 January 10, 2018, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Kathleen Scorpio-Butina, 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 recipient.
2. Petitioner was a member of a group that consisted solely of herself.
3. Petitioner had unearned income in the form of Retirement, Survivors, and Disability Insurance (RSDI) benefits in the amount of \$776 per month and disability payments through Cigna in the amount of \$327 per month.
4. Petitioner had earned income from rental payments paid by her daughter (Exhibit C).
5. On October 9, 2017, the Department sent Petitioner a Notice of Case Action informing her that her FAP benefit amount was increased to \$174 per month effective November 1, 2017, ongoing (Exhibit B).

6. On November 22, 2017, Petitioner submitted a request for hearing disputing the Department's decision.

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 Department sent Petitioner a Notice of Case Action on October 9, 2017, informing her that her FAP benefit amount was increasing to \$174 per month effective November 1, 2017, ongoing. According to the Notice of Case Action, Petitioner was budgeted \$200 in earned income due to Petitioner receiving rental income. Petitioner submitted a request for hearing to dispute the inclusion of the rental income.

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. Prospective income is income not yet received but expected. BEM 505 (October 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.

Rental income is money an individual (landlord) receives for allowing another individual (renter) to use the landlord's property. BEM 504 (July 2014), p. 1. Some types of rental/room and board income are counted as unearned income and some as earned income or self-employment. BEM 504, p. 1. In-home rental is when a landlord rents out part of his own dwelling to another individual. BEM 504, p. 2. The Department counts the gross rent payment minus expenses as earning income from self-employment. BEM 504, p. 2. The Department will allow the higher of the following as expenses: (i) 60% of the rental payment or (ii) actual rental expenses if the landlord chooses to claim and verify the expenses. BEM 504, p. 2.

On May 23, 2017, Petitioner submitted a letter to the Department that was dated December 1, 2015, and was authored by Petitioner's daughter (Exhibit C). In the letter, Petitioner's daughter states that she gives her mother \$700 per month to cover the cost of rent and utilities. The Department designated \$500 as the rental amount. The Department determined Petitioner had in-home rental income, as her daughter was living in her home. The Department allowed the 60% expense. The Department properly concluded that Petitioner had \$200 in earned income as a result of the rental income from her daughter. Therefore, the Department properly calculated Petitioner's earned income.

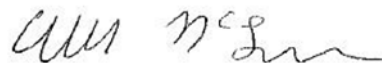
Petitioner testified that she sent a letter to the Department in April 2017 informing them that her daughter was no longer providing her rent. The Department presented the letter that Petitioner submitted on April 12, 2017 (Exhibit F). Petitioner does not make mention of the rent she received from her daughter. Petitioner testified it was possible she neglected to include that information. Additionally, the Department received the letter regarding the receipt of rental income from Petitioner on May 23, 2017. The Department testified that it did not receive notice from Petitioner that she was no longer receiving rental income until October 2017 (Exhibit D). As a result of the receipt of the letter, the Department recalculated Petitioner's FAP benefits without the rental income (Exhibit A).

Petitioner failed to establish that she timely notified the Department of her change in income. Therefore, the Department properly included the rental income in Petitioner's FAP budget. Petitioner did not dispute the accuracy of the other factors that were used to calculate her FAP benefits. Therefore, the Department established that it properly calculated Petitioner 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 acted in accordance with Department policy when it determined Petitioner's FAP benefit amount.

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



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-Macomb-20-Hearings

Petitioner



BSC4
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