

In the Hearing Decision, ALJ Marler found that the Department had established that Petitioner was overissued ██████ in Food Assistance Program (FAP) benefits she received from November 2015 through December 2016 where her employment income with the ████████████████████ was not included in the calculation of her FAP benefits during that period. ALJ ordered that the Department recoup and/or collect such benefits.

In her rehearing and/or reconsideration request, Petitioner alleges that, in calculating the FAP overissuance, (1) the Department failed to consider periods during which she was laid off from USPS that would have affected the start dates for the overissuance, (2) the Department improperly calculated her monthly child support income for several months as shown in the documentation she provided from the Friend of the Court, and (3) her rent and household expenses were improperly excluded in the budgets calculating her overissuance. Petitioner is in essence alleging a misapplication of manual policy or law in the Hearing Decision, which led to the wrong decision, and mathematical errors that affect her substantial rights. Furthermore, a review of this matter shows that the ALJ applied the incorrect gross income limit, resulting in a misapplication of policy. As such, it is found that sufficient grounds for a reconsideration have been established. Therefore, Petitioner's request for reconsideration is GRANTED.

The Decision and Order of Reconsideration follows a full review of the case file, all exhibits, the hearing record and applicable statutory and policy provisions.

DECISION AND ORDER OF RECONSIDERATION

ISSUE

Did the ALJ properly conclude that the Department properly calculated the FAP overissuance for November 2015 through December 2016?

FINDINGS OF FACT

The undersigned Administrative Law Manager, based upon the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On January 29, 2018 and February 26, 2018, a hearing was held in the above captioned matter.
2. On February 27, 2018, ALJ Marler issued a Hearing Decision in the matter.
3. The Findings of Fact numbers 1 through 4 in the Hearing Decision are incorporated by reference.

4. On [REDACTED], 2018, the Michigan Administrative Hearing System (MAHS) received Petitioner's timely request for reconsideration, which is granted herein.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), Reference Tables Manual (RFT), and 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 her request for rehearing and/or reconsideration, Petitioner argues that (1) the Department failed to consider periods during which she was laid off from [REDACTED] that would have affected the start dates for the overissuance, (2) in the overissuance budgets the Department presented to show the FAP benefits she was eligible to receive if her [REDACTED] employment income was included in the calculation of her FAP benefits, the Department did not apply the correct child support income she actually received as shown in the documentation she provided from the Friend of the Court, and (3) the Department improperly excluded her rent and household expenses in the budgets calculating her overissuance.

Petitioner argues that there were periods that she was laid off from [REDACTED], or transferred from one office to another, and the Department should not count her income until the 10 days to report, 10 days to process, and 12 days negative action period is applied following her re-employment. However, a review of Petitioner's employment information for [REDACTED] from the Work Number, the Department-accessible database where the employer voluntarily reports employment information, shows that Petitioner received consistent biweekly pay from USPS from July 31, 2015 to December 30, 2016. Petitioner failed to present any pay information that contradicted that presented by the Department. Accordingly, the Department properly relied on the pay information in the Work Number and began the overissuance period in November 2015 and continued it until December 2016.

Petitioner also argues that the Department miscalculated her actual child support income in the FAP overissuance budgets and presented printouts from the Child Support Enforcement System showing her actual monthly income. In calculating an overissuance, if improper budgeting of income caused the overissuance, the actual income for the past overissuance month for that income source is used. BAM 705 (January 2016), p. 8. However, any income properly budgeted in the issuance budget,

including prospected income, remains the same in that month's corrected budget. BAM 705, p. 8.

At the hearing, the Department testified that the child support income amount in the FAP monthly overissuance budgets was that used in the original issuance budgets. The November 11, 2014 Notice of Case Action and the November 18, 2015 Notice of Case Action each notified Petitioner that her FAP benefits were based on prospective child support calculations of \$[REDACTED] monthly. A review of the August 2015 to October 2015 child support income support the calculation of the prospective income used in the budgets. See BEM 505 (July 2016), p. 5. As ALJ Marler pointed out, it was Petitioner's responsibility to timely report changes in her child support income *during* this certification period if she disputed the calculation or there was a decrease. (Exhibit 1, pp. 50-51). Because at issue was the exclusion of Petitioner's [REDACTED] employment income, the overissuance budgets properly corrected only this unreported income source and not the prospected child support income.

Petitioner also argued that the Department improperly excluded her housing expenses and other expenses. As ALJ Marler pointed out, with respect to Petitioner's utility expenses, the Department budgeted the mandatory heat and utility standard, the most beneficial standard available to a client, for each month in the overissuance period. See BEM 554 (October 2015 and June 2016), pp. 14-20; RFT 255 (October 2015 and October 2016), p. 1. ALJ Marler agreed, however, that the Department improperly removed Petitioner's rental obligations in the FAP overissuance budgets. However, in determining a household's *gross* income eligibility for FAP, deductions for housing expenses are not considered. See BEM 556 (July 2013), p. 3. Therefore, housing expenses are irrelevant when the evidence shows that an individual has gross income in excess of the gross income limit for FAP eligibility.

In this case, ALJ Marler concluded that Petitioner's income for each month between November 2015 and December 2016 resulted in Petitioner having excess gross income for FAP eligibility. ALJ Marler used a gross income limit of [REDACTED] for November 2015 through September 2016 and [REDACTED] for October 2016 through September 2016. However, because FAP applicants and recipients (other than groups containing certain disqualified members) are categorically eligible for FAP if they meet the asset test and if their gross income is at or below 200% of the federal poverty level, the gross income limit for FAP eligibility for Petitioner's five-person FAP group size was \$4,736 for November 2015 to September 2016 and \$4,740 for October 2016 to December 2016. BEM 213 (January 2016), p. 1; RFT 250 (October 2015 and October 2016), p. 1. When the correct gross income limit is applied, Petitioner had gross income that exceeded the gross income limit, and was therefore ineligible for FAP benefits, for November 2015, December 2015, April 2016, July 2016, and November 2016. Those benefits total [REDACTED] ([REDACTED] for November 2015, [REDACTED] for December 2015, [REDACTED] for April 2016, [REDACTED] for July 2016, and [REDACTED] in November 2016). Because Petitioner's income did not exceed the gross income limit for January 2016 through March 2016, May 2016 through June 2016, August 2016 through October 2016, and December 2016 and because the

net income budgets improperly removed Petitioner's rent income from the net income overissuance budgets for those months, the Department failed to satisfy its burden of showing that it properly calculated the FAP overissuance those months.

DECISION AND ORDER

Based on the above Findings of Fact and Conclusions of Law, the Department supported only part of the \$ [REDACTED] FAP overissuance for November 2015 to December 2016.

Accordingly, the February 27, 2018 Hearing Decision is **REVERSED**.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION ON RECONSIDERATION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Remove the [REDACTED] FAP overissuance for November 2015 to December 2016.
2. Recalculate the FAP overissuance budgets for January 2016 to March 2016, May 2016, June 2016, August 2016 to October 2016, and December 2016;
3. Add the recalculated overissuance for those months to the [REDACTED] verified for the remaining months (November 2015, December 2015, April 2016, July 2016, and November 2016); and
4. Notify Petitioner in writing of the recalculated FAP overissuance for November 2015 to December 2016, with rights to request a hearing if she disputes the recalculated overissuance.



AE/tm

Alice C. Elkin
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.

DHHS

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Petitioner

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cc: FAP: M. Holden; D. Sweeney
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