



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: January 24, 2018
MAHS Docket No.: 17-016194
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 22, 2018, from Detroit, Michigan. Petitioner was present with his fiancée, [REDACTED]. The Department of Health and Human Services (Department) was represented by Amber Gibson, 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. On [REDACTED], 2016, Petitioner completed a Mid-Certification review (Exhibit G).
3. On September 23, 2017, the Department sent Petitioner a Notice of Case Action informing him that his FAP benefit amount was increasing to \$88 per month effective October 1, 2017, ongoing (Exhibit E).
4. On December 9, 2017, the Department sent Petitioner a Notice of Case Action informing Petitioner that his FAP benefit amount was being decreased to \$15 per month effective January 1, 2018, ongoing (Exhibit B).

5. On [REDACTED], 2017, Petitioner submitted a request for hearing regarding his FAP benefits.
6. On December 13, 2017, Petitioner submitted verification of his housing and utility expenses (Exhibit A).
7. On December 27, 2017, the Department sent Petitioner a Notice of Case Action informing him that his FAP benefits were increasing to \$145 per month effective January 1, 2018, ongoing (Exhibit C).

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 submitted a hearing request to dispute his constant fluctuating FAP benefit amount. On December 9, 2017, the Department sent Petitioner a Notice of Case Action informing him that his FAP benefit amount was being reduced to \$15 per month effective January 1, 2018, ongoing. The Department did not include any housing or heat/utility expenses in the budget. On December 13, 2017, Petitioner submitted verification of his housing/utility expenses. The Department recalculated Petitioner's FAP benefits and issued the Notice of Case Action on December 27, 2017, informing Petitioner his FAP benefits were increasing to \$145 per month effective January 1, 2018, ongoing. Petitioner stated he was satisfied with that FAP benefit amount.

As Petitioner testified he was satisfied with his January 1, 2018, ongoing FAP benefit amount of \$145, the December 9, 2017 Department decision will not be addressed. Petitioner never received \$15 in FAP benefits as a result of the December 9, 2017 decision, and therefore, the issue is moot.

The Department issued a Notice of Case Action on September 23, 2017, increasing Petitioner's FAP benefits to \$88 per month effective October 1, 2017, ongoing. Petitioner's hearing request was disputing the constant fluctuation in his FAP benefit amount. As Petitioner timely requested a hearing regarding the September 23, 2017

decision, the issue will be addressed. The Department presented a budget for October 2017, ongoing, to establish Petitioner's FAP benefit calculation (Exhibit F).

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.

The Department testified that Petitioner had unearned income in the amount of \$749. The Department testified that amount consisted of \$735 in Supplemental Security Income (SSI) benefits and \$14 per month in State SSI Payments (SSP). The Department presented the State On-Line Query (SOLQ), which showed Petitioner did receive \$735 per month in SSI benefits (Exhibit D). Additionally, Petitioner testified those figures were correct. Therefore, the Department properly calculated Petitioner's unearned income.

The deductions to income on the net income budget were also reviewed. There was evidence presented that the Petitioner's group includes a senior/disabled/veteran (SDV). BEM 550. Thus, the group is eligible for the following deductions to income:

- Dependent care expense.
- Excess shelter.
- Court ordered child support and arrearages paid to non-household members.
- Standard deduction based on group size.
- Medical deduction.

BEM 554; BEM 556

Petitioner's FAP benefit group size of one justifies a standard deduction of \$160. RFT 255 (October 2017), p. 1. There was no evidence presented that Petitioner had any out-of-pocket dependent care, child support expenses or out-of-pocket medical expenses. Therefore, the budget properly excluded any deduction for dependent care, child support or medical expenses.

The Department determined Petitioner was entitled to an excess shelter deduction of \$243. When calculating the excess shelter deduction, the Department will consider the client's total shelter amount and reduce that number by 50% of the adjusted gross income. The Department testified that it included a \$215 housing expense and the \$537 heat/utility (h/u) standard in the total shelter amount for August 2017. The budgets for

September and October 2017, ongoing, do not include a housing expense, only the h/u standard.

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. The Department will verify 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, the Department will remove the old expense until the new expense is verified. BEM 554, p. 14. To request verification of information, the Department sends a verification checklist (VCL) which tells the client what verification is required, how to obtain it, and the due date. BAM 130 (April 2017), p. 3. For FAP cases, the Department allows the client 10 calendar days to provide the verification that is required. BAM 130, p. 7.

The Department testified the last time Petitioner verified his housing expense was in December 2015. The Department could not provide testimony as to why the \$215 housing expense was included in the August 2017 budget, but then was subsequently removed. Petitioner did complete a Mid-Certification review on [REDACTED], 2017, and indicated he had a rental expense. However, the Department did not send Petitioner a VCL requesting verification of his rental expense. Relevant policy states that the Department must tell the client what verification is required and to use the VCL to request information. BEM 130, p. 3. There was no evidence provided that the Department sent a VCL to Petitioner requesting verification of his housing expense and that he failed to respond, thus justifying the removal of the housing expense. Therefore, the Department failed to establish that it properly followed policy when calculating Petitioner's excess shelter deduction. As the Department failed to establish it properly calculated Petitioner's excess shelter deduction, it follows the Department did not properly calculate Petitioner's FAP benefit amount.

DECISION AND ORDER

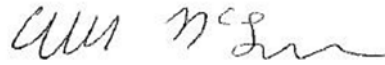
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined Petitioner's FAP benefit 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 benefit eligibility as of October 1 2017, ongoing;

2. If Petitioner is entitled to additional FAP benefits, issue supplements he was entitled to receive but did not as of October 1, 2017, ongoing;
3. Notify Petitioner of its FAP decision in writing.



EM/cg

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

Via Email:

MDHHS-Ingham-Hearings
M. Holden
D. Sweeney
BSC2-Hearing-Decisions
MAHS

Petitioner – Via First-Class Mail:

