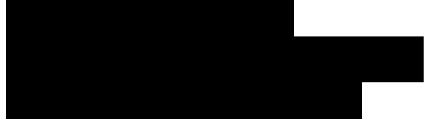




RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR



Date Mailed: March 5, 2018
MAHS Docket No.: 18-000837
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. 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 November 29, 2017, Petitioner completed a redetermination.
3. Petitioner was a member of household that consisted solely of himself.
4. Petitioner had unearned income in the form of Retirement, Survivors, and Disability Insurance (RSDI) in the monthly amount of \$1,019 (Exhibit C).
5. On December 9, 2017, the Department sent Petitioner a Notice of Case Action informing him that his FAP benefit amount was decreasing to \$68 per month effective January 1, 2018, ongoing.
6. On January 23, 2018, Petitioner submitted a request for hearing disputing the Department's decision to reduce his FAP benefits.

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 completed a redetermination on November 29, 2017. The Department discovered that Petitioner's RSDI benefits were increasing effective January 1, 2018. As a result, the Department recalculated Petitioner's FAP benefit amount. The Department determined that Petitioner was eligible for \$68 in FAP benefits effective January 1, 2018, ongoing. The Department presented a budget to establish how Petitioner's FAP benefit amount was calculated for January 2018 (Exhibit B).

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 RSDI income in the monthly amount of \$1,019. The Department presented the State On-Line Query (SOLQ), which showed Petitioner did receive \$1,019 in RSDI benefits effective January 2018 (Exhibit C). Therefore, the Department properly calculated Petitioner's unearned income.

The deductions to income on the net income budget were also reviewed. There was **no** evidence presented that Petitioner's group includes a senior/disabled/veteran (SDV) household member. BEM 550 (October 2015), pp. 1-2. 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.
- An earned income deduction equal to 20% of any earned income.

BEM 554 p. 1; BEM 556 p. 3.

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 or child support expenses. Therefore, the budget properly excluded any deduction for dependent care or child support.

When calculating the excess shelter deduction, the Department will add the total shelter amount and subtract 50% of the adjusted gross income. Included in the total shelter amount is the verified housing expense. 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.

According to the January 2018 budget, Petitioner was entitled to \$75 in FAP benefits per month. However, the Notice of Case Action showed Petitioner was entitled to \$68 in FAP benefits per month. The difference between the Notice of Case Action and the January 2018 budget presented by the Department is the amount of the housing expense that was used. The Department could not explain the discrepancy between the notice and the budget. The Department testified it was unsure as how either figure was obtained. Petitioner testified that his housing expenses included a home equity loan of around \$160 per month and home owner's insurance in the former amount of \$533, which recently increased. The hearing summary provided by the Department indicates that Petitioner did have a housing expense in the amount of \$533, which was his home owner's insurance. It is unclear as to how the Department determined the amount of Petitioner's housing expense or why two different figures were used. Therefore, the Department failed to establish that it properly calculated Petitioner's excess shelter deduction. It follows that the Department also failed to establish that it properly calculated Petitioner's FAP benefit amount.

DECISION AND ORDER

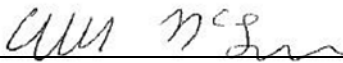
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it

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 January 1, 2018, ongoing;
2. If Petitioner is eligible for additional FAP benefits, issue supplements he is entitled to receive but did not as of January 1, 2018, 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-Macomb-20-Hearings
MDHHS-Recoupment-Hearings
M. Holden
D. Sweeney
MAHS

Petitioner – Via First-Class Mail:

