



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR



Date Mailed: March 20, 2018
MAHS Docket No.: 18-001061
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, an in-person hearing was held on March 19, 2018, from Detroit, Michigan. Petitioner was present and was represented by [REDACTED]. The Department of Health and Human Services (Department) was represented by Lisa Young, Family Independence Manager.

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. In October and November 2017, Petitioner was issued \$224 in FAP benefits (Exhibit G). A Notice of Case Action was not sent advising Petitioner of the FAP benefits she was entitled to receive for those months.
3. On November 16, 2017, the Department sent Petitioner a Notice of Case Action informing Petitioner that her FAP benefit amount was \$224 per month effective December 1, 2017, ongoing (Exhibit 9).
4. In December 2017, Petitioner was issued \$274 in FAP benefits, which comprised of a monthly benefit amount of \$224 and a \$50 supplement (Exhibit G).

5. On December 9, 2017, the Department sent Petitioner a Notice of Case Action informing Petitioner her FAP benefit amount was decreasing to \$217 per month effective January 1, 2018, ongoing (Exhibit 11).
6. On January 3, 2018, the Department sent Petitioner a Notice of Case Action informing Petitioner that her FAP benefit amount was increasing to \$267 per month effective January 1, 2018, ongoing (Exhibit 2).
7. In January 2018, Petitioner received \$267 in FAP benefits which comprised of a \$217 monthly FAP benefit amount and a \$50 supplement (Exhibit G).
8. On January 17, 2018, the Department sent Petitioner a Notice of Case Action informing Petitioner that her FAP benefit amount was decreasing to \$221 per month effective February 1, 2018, ongoing (Exhibit A).
9. On January 24, 2018, Petitioner submitted a request for hearing disputing the Department's actions.

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 request for hearing disputing the Department's calculation of her FAP benefit amount for October 1, 2017, ongoing. Specifically, Petitioner disputed the Department's determination of her self-employment income during those months, as well as the budgeted housing expense for January 2018. Petitioner contended that her self-employment expenses exceeded her proceeds, and therefore, her countable income from self-employment should be \$0.

Petitioner submitted her hearing request on January 24, 2018. The Department issued notices on November 16, 2017, regarding Petitioner's FAP benefits for December 1, 2017, ongoing; on January 3, 2018 for January 1, 2018, ongoing; and on January 17, 2018 for February 1, 2018, ongoing. The Department conceded that it did not issue notices for October and November 2017 benefit months, advising Petitioner of the

amount of her FAP benefits, how they were calculated and her right to request a hearing.

A request for a hearing must be submitted within 90 days from the date of the written notice of case action. BAM 600 (April 2017), p. 6. However, the Department must provide a client notice of the action being taken and their right to request a hearing. BAM 600, p. 1. Petitioner submitted a timely hearing request to address her FAP benefits for December, ongoing. The Department failed to properly provide Petitioner with notice of her FAP benefit amount for October and November 2017. As such, Petitioner's FAP benefit amount from October 1, 2017, ongoing will be addressed.

The Department recalculated Petitioner's FAP benefit amount on a multitude of occasions and issued numerous decisions regarding her FAP benefit amount. The Department also testified that supplements were issued to Petitioner and notices were not sent on those occasions. The Department presented budgets for October, November and December 2017, as well as for January 2018 (Exhibit H). The Department also provided Petitioner's benefit issuance summary showing the amount of FAP benefits she was issued (Exhibit G). It is evident that the amount that was issued to Petitioner each month was based on the budgets presented. As such, it will be determined if the Department properly calculated Petitioner's FAP benefit amount for each month based on the budgets provided for October 2017 through January 2018, not the information contained in the various notices for that period.

October and November 2017

For October and November 2017, the Department determined Petitioner was entitled to a FAP benefit amount of \$224. The Department presented FAP budgets to establish the calculation of Petitioner's FAP benefit amount (Exhibit H, pp. 1-4).

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. Individuals who run their own businesses are self-employed. BEM 502 (July 2017), p. 1. This includes but is not limited to selling goods, farming, providing direct services, and operating a facility that provides services such as adult foster care home or room and board. BEM 502, p. 1. The amount of self-employment income before any deductions is called total proceeds. BEM 502, p. 3. Countable income from self-employment equals the total proceeds minus allowable expenses of producing the income. BEM 502, p. 3. Allowable expenses (except MAGI related MA) are the higher of 25 percent of the total proceeds, or actual expenses if the client chooses to claim and verify the expenses. BEM 502, p. 3. BEM 502 provides a list of expenses that are allowed when determining self-employment countable income, pp. 3-4.

According to the budgets provided, the Department determined Petitioner's countable self-employment income was \$140 for both October and November 2017. The only information provided as to the calculation of the self-employment income presented by

the Department was the self-employment budget summary (Exhibit I). According to the budget summary, Petitioner's proceeds were determined to be \$428.86 and her verified expenses were \$628.29, which would result in a deficit. The Department could not provide an explanation as to why Petitioner's self-employment income was calculated to be \$140, as opposed to \$0. Therefore, the Department failed to establish it properly calculated Petitioner's self-employment income for October and November 2017. As it follows, the Department also failed to establish it properly calculated Petitioner's FAP benefit amount for those months.

December 2017

For December 2017, the Department determined Petitioner was entitled to \$274 in FAP benefits. The Department presented a FAP budget to establish the calculation of Petitioner's FAP benefit amount (Exhibit, pp. 5-6).

According to the budget provided, the Department determined Petitioner's countable self-employment income was \$0. The budget summary indicated the figures the Department used to calculate Petitioner's self-employment income were proceeds in the amount of \$428.86 and expenses in the amount of \$628.29. Based on the figures used, the Department properly concluded that Petitioner's self-employment income was \$0. Petitioner did not dispute any of the other figures in the December 2017 budget. Thus, the Department properly calculated Petitioner's FAP benefit amount for December 2017.

January 2018

For January 2018, the Department determined Petitioner was entitled to \$267 in FAP benefits. The Department presented a FAP budget to establish the calculation of Petitioner's FAP benefit amount (Exhibit, pp. 7-9).

According to the budget provided, the Department determined Petitioner's countable self-employment income was \$0. The Department used the same figures for proceeds and expenses as it did in December 2017. Based on the figures used, the Department properly concluded that Petitioner's self-employment income was \$0.

When calculating a client's FAP benefit amount, individuals are entitled to certain deductions, including an excess shelter deduction. In January 2018, the Department determined Petitioner was entitled to an excess shelter deduction of \$395. When calculating the excess shelter deduction, the Department will consider the client's total shelter amount and reduces that number by 50% of the adjusted gross income. The Department testified that it included a \$196 housing expense and the \$537 heat/utility (h/u) standard in the total shelter amount for January 2018.

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.

Petitioner testified that her housing expense for January 2018 should have been \$153. Petitioner's housing expense has been \$153 since July 1, 2017. The Department included a \$153 housing expense for February 1, 2018, ongoing, and could not explain why the \$196 figure was used for January 2018. Therefore, the Department failed to establish that it properly calculated Petitioner's excess shelter deduction. As it follows, the Department failed to establish that it properly determined Petitioner's FAP benefit amount for January 2018.

February 1, 2018, ongoing

On January 17, 2018, the Department sent Petitioner a Notice of Case Action informing her that her FAP benefit amount was decreased to \$221 per month effective February 1, 2018, ongoing.

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. Individuals who run their own businesses are self-employed. BEM 502 (July 2017), p. 1. This includes but is not limited to selling goods, farming, providing direct services, and operating a facility that provides services such as adult foster care home or room and board. BEM 502, p. 1. The amount of self-employment income before any deductions is called total proceeds. BEM 502, p. 3. Countable income from self-employment equals the total proceeds minus allowable expenses of producing the income. BEM 502, p. 3. Allowable expenses (except MAGI related MA) are the higher of 25 percent of the total proceeds, or actual expenses if the client chooses to claim and verify the expenses. BEM 502, p. 3. BEM 502 provides a list of expenses that are allowed when determining self-employment countable income, pp. 3-4.

According to the notice provided, the Department determined Petitioner's countable self-employment income was \$94. The Department testified that Petitioner's proceeds and verified expenses were based on the documentation last provided by Petitioner on October 30, 2017. Petitioner submitted a check verifying that her proceeds were \$428.86 (Exhibit C). The Department also testified that Petitioner submitted verification of expenses including a booth fee for \$199 (Exhibit E) and various merchandise purchases totaling what the Department calculated to be \$135.23 (Exhibit F).

At the hearing, Petitioner testified that the documents submitted show that the merchandise purchases total \$220. Petitioner also argued that she submitted verification of an expense related to the purchase of gas to the Department along with the other expense verifications (Exhibit 15). Petitioner argued that with the merchandise purchases, gas, and booth rent the total expense amount was \$432.

One of the verifications submitted by Petitioner was not clear (Exhibit F, p. 21). Petitioner testified at the hearing that the original copy contains a receipt for a merchandise purchase for \$50. The copy submitted at the hearing was illegible as a result of the document being faxed. Therefore, it is reasonable that the Department did not include that expense. However, the documents that are legible show merchandise purchases in excess of \$135.23. The [REDACTED] purchase history shows purchases totaling \$82.62 (Exhibit F, pp. 1-20). The two [REDACTED] receipts show purchases in the amount of \$18.38 and \$18.69 (Exhibit F, pp. 22-23). The final document shows a purchase at [REDACTED] in the amount of \$7.84 and [REDACTED] in the amount of \$42.39. The Department did not allege that any of the expenses submitted should not be included due to inability to identify the item purchased. The Department stated that all of the expenses that were submitted were considered. The Department was unable to articulate as to how it calculated the figure of \$135.23. Therefore, the Department failed to establish that it properly calculated Petitioner's self-employment income. As it follows, the Department failed to establish it properly calculated Petitioner's FAP benefit amount for February 1, 2018, ongoing.

DECISION AND ORDER

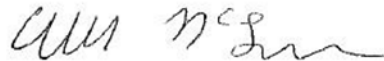
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department acted in accordance with Department policy when it calculated Petitioner's FAP benefit amount for December 2017. The Department failed to establish that it acted in accordance with policy when it calculated Petitioner's FAP benefit amount for October 2017, November 2017 and January 2018, ongoing.

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to Petitioner's December 2017 FAP benefit amount and **REVERSED IN PART** with respect to Petitioner's FAP benefit amount for October 2017, November 2017 and January 1, 2018, ongoing.

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 for October 2017, November 2017 and January 1, 2018, ongoing;

2. If Petitioner is eligible for additional FAP benefits, issue supplements she is entitled to receive; and
3. Notify Petitioner of 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-Wayne-17-Hearings
M. Holden
D. Sweeney
BSC4-Hearing Decisions
MAHS

**Counsel for Petitioner
Via First-Class Mail:**

[REDACTED]

**Petitioner
Via First-Class Mail:**

[REDACTED]