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GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: July 20, 2018
MAHS Docket No.: 18-006064
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 July 19, 2018, from Detroit, Michigan. Petitioner was present and represented himself. The Department of Health and Human Services (Department) was represented by [REDACTED], 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 May 9, 2018, Petitioner completed a redetermination pursuant to his FAP benefit case (Exhibit A).
3. Petitioner's FAP group consists solely of himself.
4. Petitioner receives [REDACTED] per month in gross Supplemental Security Income (SSI) benefits.

5. On May 14, 2018, the Department sent Petitioner a Notice of Case Action informing him that his FAP benefits were being decreased to [REDACTED] per month effective June 1, 2018, ongoing (Exhibit D).
6. On June 11, 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 completed a redetermination on May 9, 2018. On May 14, 2018, the Department issued a decision stating Petitioner's benefits were decreasing to [REDACTED] per month effective June 1, 2018. The Department testified that Petitioner's FAP benefits were reduced because he was previously receiving the heat/utility deduction, which the Department stated was a mistake.

The Department presented the Notice of Case Action issued on May 14, 2018, which contains the factors that were considered when calculating Petitioner's FAP benefit amount. 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 testified that the only income that was considered was Petitioner's SSI benefits in the monthly amount of [REDACTED]. Petitioner acknowledged that he receives [REDACTED] in SSI benefits per month. Therefore, the Department properly calculated Petitioner's countable 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 [REDACTED]. 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.

In calculating the excess shelter deduction, the Department stated that it considered Petitioner's verified housing expense of [REDACTED] and that he was only responsible for electric and telephone expenses. The Department testified that the landlord confirmed that all other utilities were included in Petitioner's rent. The Department contended that the electric that Petitioner paid was non-heat electric, and therefore, he was only entitled to the non-heat electric utility standard of [REDACTED] and the telephone standard of [REDACTED].

The heat/utility standard (h/u) standard covers all heat and utility costs including cooling expenses. BEM 554, p. 15. FAP groups that qualify for the h/u standard do not receive any other individual utility standards. BEM 554, p. 15. FAP groups whose heat is included in the cost of their monthly rent may still be eligible for the h/u standard if: they are billed for excess heat payments from their landlord; they have received a home heating credit in an amount greater than [REDACTED] for the applicable period; or they have received a Low Income Home Energy Assistance Payment (LIHEAP) or a LIHEAP payment was made on their behalf in an amount greater than [REDACTED] for the applicable period. BEM 554, pp. 15-19. Additionally, FAP groups who pay cooling (including room air conditioners) are eligible for the h/u standard if they verify their responsibility to pay for non-heat electric expenses. BEM 554, p. 16. FAP groups not eligible for the h/u standard who have other utility expenses or contribute to the costs of other utility expenses are eligible for the individual utility standards. BEM 554, p. 21.

Petitioner testified that the electric that he pays is to heat his residence. Petitioner contended that the building in which he lives is relatively new and uses electric heat, as opposed to gas. The Department was unclear as to why it believed Petitioner's heating costs were included in his rent and the electric costs that he incurred were for non-heat electric. It is entirely possible that the electric costs that Petitioner pays are to heat his residence. Therefore, the Department failed to establish that Petitioner was not responsible for heating costs, and therefore, was not entitled to the full h/u standard. Thus, the Department failed to establish that it properly calculated Petitioner's FAP benefit amount.

DECISION AND ORDER

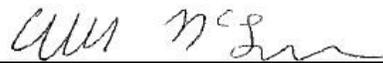
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined Petitioner's FAP benefit 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 June 1, 2018, ongoing.
2. If Petitioner is entitled to additional FAP benefits, issue supplements he is entitled to receive as of June 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

