



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

ORLENE HAWKS
DIRECTOR

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Date Mailed: April 25, 2019
MOAHR Docket No.: 19-001417
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, an in-person hearing was held on April 11, 2019, from Grand Rapids, Michigan. Petitioner was represented by himself. The Department was represented by Theresa Ergang and Tamia McGlothlin.

ISSUE

Did the Department of Health and Human Services (Department) properly deny Petitioner's application for Food Assistance Program (FAP) and State Emergency Relief (SER) benefits?

FINDINGS OF FACT

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

1. On ██████████ 2019, the Department received Petitioner's application for assistance. Exhibit A, pp 6-7.
2. Petitioner receives monthly Supplemental Security Income (SSI) in the gross monthly amount of ██████████.
3. Petitioner has a monthly mortgage payment of ██████████.
4. Petitioner reported gross receipts from self-employment income on his 2017 income tax documents in the gross annual amount of ██████████, with a net profit of ██████████. Exhibit A, p 16.

5. On January 23, 2019, the Department notified Petitioner that he is eligible for a \$99 monthly allotment of Food Assistance Program (FAP) benefits as of March 1, 2019. Exhibit A, pp 46-50.
6. On January 23, 2019, the Department notified Petitioner that he is not eligible for State Emergency Relief (SER) benefits. Exhibit A, pp 52-54.
7. On February 5, 2019, the Department notified Petitioner that he is eligible for a \$144 monthly allotment of Food Assistance Program (FAP) benefits effective March 1, 2019. Exhibit A, pp 59-63.
8. On February 4, 2019, the Department received Petitioner's request for a hearing protesting the denial of Food Assistance Program (FAP) and State Emergency Relief (SER) 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.

Individuals who run their own businesses are self-employed. 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. A person who provides child care in his/her home is considered to be self-employed. Rental income is sometimes counted as unearned income and sometimes as self-employment. The amount of self-employment income before any deductions is called total proceeds. Countable income from self-employment equals the total proceeds minus allowable expenses of producing the income. Allowable expenses are the higher of 25 percent of the total proceeds, or actual expenses if the client chooses to claim and verify the expenses. Department of Human Services Bridges Eligibility Manual (BEM) 502 (July 1, 2017), p 1.

On January 23, 2019, the Department notified Petitioner that he was eligible for a \$99 monthly allotment of FAP benefits. This determination was based on self-employment income in the monthly amount of \$[REDACTED]. The Department revised this determination and notified Petitioner on February 5, 2019, that he is eligible for a \$144 monthly allotment of FAP benefits. This determination was based on self-employment income in the monthly amount of [REDACTED].

Department policy indicates that for all types of assistance other than Medicaid, the Department will use an income tax return as the primary source of income verification and the DHS-431 as the secondary source. In this case, the Department had Petitioner's income tax return. BEM 502, p 7.

Department policy indicates that self-employment expenses are verified from the DHS-431 for all types of assistance other than Medicaid. In this case, the Department did not have a DHS-431. BEM 502, p 8. 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.

In this case, the Department used Petitioner's net monthly self-employment income, which was determined by taking the net profit from Petitioner's tax return and dividing this amount by 12 months. This Administrative Law Judge finds no basis in BEM 502 for determining Petitioner's countable self-employment income from the net profit verified from the tax return for the purposes of determining his eligibility for FAP benefits.

The State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by the Department (formerly known as the Department of Human Services) pursuant to MCL 400.10 and Mich Admin Code, R 400.7001-.7049.

Self-employment expenses for SER benefits are determined differently than for FAP or Medicaid.

SER does not allow deductions for garnishment actions or expenses of producing self-employment income (such as capital expenditures, labor costs, transportation costs while on the job, materials, loan and property payments, taxes, insurance, etc.). Expenses of employment are limited to the following:

- Mandatory withholding taxes (25 percent of the gross).
- Deductions required by employer as a condition of employment.
- Deductions for health insurance.
- Court-ordered child support paid, including arrears. Expense amount cannot exceed the court ordered amount; no deduction is made for paid, voluntary child support.
- The cost of dependent care.

Department of Health and Human Services Emergency Relief Manual (ERM) 206 (February 1, 2017), p 5.

The Department applied self-employment income in the gross monthly amount of [REDACTED], which was determined by dividing Petitioner's gross annual self-employment income by 12 months. The Department determined that Petitioner receives SSI benefits in the gross monthly amount of [REDACTED]. After the mandatory 25% deduction from self-employment for taxes, Petitioner's total net monthly income was [REDACTED]. Deducting the \$445 income need standard from net income as directed by ERM 206 leaves him with an income copayment of [REDACTED]. Petitioner made one mortgage payment in the previous six months, leaving him with a [REDACTED] shortfall. Therefore, in order to receive SER benefits to receive SER assistance to avoid foreclosure, Petitioner is responsible to pay the income co-payment and the shortfall. Since the total of the income co-payment and the shortfall exceed the total need, the Department denied Petitioner's SER application.

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 did not act in accordance with Department policy when it determined Petitioner's eligibility for Food Assistance Program (FAP) benefits as of March 1, 2019. The denial of Petitioner's State Emergency Relief (SER) application is upheld.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED** with respect to Petitioner's January 15, 2019, State Emergency Relief (SER) application but **REVERSED** with respect to the determination of Petitioner's monthly allotment of Food Assistance Program (FAP) benefits as of March 1, 2019.

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:

Initiate a determination of the Petitioner's eligibility for the Food Assistance Program (FAP) as of March 1, 2019.

KS/dh



Kevin Scully
Administrative Law Judge
for Robert Gordon, 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 Office Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office Of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

Kimberly Kornoelje
121 Franklin SE
Grand Rapids, MI 49507

Kent County, DHHS

BSC3 via electronic mail

T. Bair via electronic mail

E. Holzhausen via electronic mail

M. Holden via electronic mail

D. Sweeney via electronic mail

Petitioner

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