



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: April 9, 2019
MAHS Docket No.: 19-002252
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 April 3, 2019, from Detroit, Michigan. Petitioner appeared and was unrepresented. [REDACTED] testified on behalf of Petitioner. The Michigan Department of Health and Human Services (MDHHS) was represented by Michelle Morley, supervisor.

ISSUE

The issue is whether MDHHS properly determined Petitioner's Food Assistance Program (FAP) eligibility for April 2019.

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 December 20, 2018, Petitioner applied for FAP benefits. Petitioner's application reported the following: responsibility for heat payment, housing expenses of \$41.67/month, and no medical expenses. Exhibit A, pp. 7-1.¹
2. As of January 2019, Petitioner was an ongoing recipient of \$192 in FAP benefits based on a group size of one person.

¹ The MDHHS hearing packet was presented in reverse numerical order and the exhibits are cited accordingly.

3. On an unspecified date, Petitioner was eligible to receive \$771/month in federally-issued gross SSI benefits. Of Petitioner's federally-issued SSI benefits, \$25 was recouped by the Social Security Administration for overpayment which Petitioner stated was not due to fraud.
4. On an unspecified date, Petitioner began receiving \$42 every three months in state-issued SSI benefits.
5. On February 27, 2019, MDHHS determined Petitioner was eligible for \$85/month in FAP benefits beginning April 2019.
6. As of February 27, 2019, Petitioner reported the following expenses to MDHHS: \$0 child support, \$0 dependent care, \$0 medical, \$49.17/month for housing, and a responsibility for heating and/or cooling.
7. On March 1, 2019, Petitioner verbally requested a hearing to dispute a reduction in FAP benefits beginning April 2019. Exhibit A, pp. 23-22.²

CONCLUSIONS OF LAW

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. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing to dispute a reduction in FAP benefits beginning April 2019. MDHHS presented a Notice of Case Action dated February 27, 2019, stating that Petitioner was eligible to receive \$85 in FAP benefits beginning April 2019. Exhibit A, pp. 21-18.

Petitioner testified one reason he believed the MDHHS determination to be incorrect was that he received more FAP benefits in the past with little or no change in income and expenses. Even if Petitioner's testimony was accurate, to determine if MDHHS properly determined Petitioner's FAP eligibility requires no consideration of Petitioner's past eligibility. Thus, Petitioner's past eligibility was irrelevant to determining whether MDHHS properly determined Petitioner's FAP eligibility for April 2019.

The Notice of Case Action dated February 27, 2019, included a summary of all relevant FAP budget factors. MDHHS also presented budget pages verifying how Petitioner's FAP eligibility was determined. Exhibit A, pp. 17-16. During the hearing, all relevant

² Clients may verbally request hearings to dispute FAP eligibility. BAM 600 (October 2018) p. 2.

budget factors were discussed. BEM 556 outlines the factors and calculations required to determine FAP eligibility.

MDHHS factored Petitioner's monthly unearned income to be \$785. It was not disputed that Petitioner received an average of \$14/month in state-issued SSI benefits. Documentation from SSA verified that Petitioner was eligible to receive \$771/month in gross SSI benefits. Exhibit A, pp. 14-12. The documentation from SSA also stated that \$25/month of Petitioner's SSI benefits were recouped due to overpayment.

Bridges counts the gross amount of current SSA-issued SSI as unearned income. BEM 503 (July 2017), p. 36. In determining gross income, amounts deducted by an issuing agency to recover a previous overpayment or ineligible payment are not part of gross income unless the overpayment is due to an intentional program violation (IPV). BEM 500 (July 2017), p. 6. IPV means there was a finding of fraud or an agreement to repay in lieu of prosecution. BEM 503 (July 2017), p. 33. MDHHS counts recouped SSI only if IPV information is volunteered by the SSI recipient or other reliable source. *Id.*

Petitioner's testimony denied that the \$25/month recoupment by SSA was due to fraud. MDHHS did not present a reliable source that recoupment by SSA was due to IPV. Given the evidence, MDHHS should have excluded the \$25/month recouped by SSA as part of Petitioner's gross income. Excluding the income results in a proper gross income of \$760. Thus, MDHHS will be ordered to recalculate Petitioner's FAP eligibility using the correct income of \$760. To simplify a comparison of the budget presented by MDHHS to the budget in this decision, for the remaining analysis, it will be assumed that MDHHS properly determined Petitioner's monthly unearned income to be \$785

MDHHS uses certain expenses to determine net income for FAP eligibility and benefit levels. BEM 554 (October 2015), p. 1. For groups without a senior (over 60 years old), disabled or disabled veteran (SDV) member, MDHHS considers the following expenses: child care, excess shelter (housing and utilities) up to a capped amount and court-ordered child support and arrearages paid to non-household members (see *Id.*). For groups containing SDV members, verified medical expenses exceeding \$35 for SDV members are additionally counted. In the FAP budget, countable day care, child support, and medical expenses are subtracted from a client's monthly countable income.

Petitioner's testimony acknowledged no day care or child support expenses. Petitioner testified he reported having \$40/month in medical expenses. Petitioner's testimony was not consistent with his application dated December 20, 2018, which reported no such expenses. Petitioner blamed the absence of reporting on MDHHS staff who, according to Petitioner, completed the application for him. Even if MDHHS helped Petitioner in completing his application, it is Petitioner's responsibility to ensure that information was accurately reported. Given the evidence, Petitioner failed to report medical expenses to MDHHS; thus, no subtractions need be taken from Petitioner's countable income.³

³ Petitioner's testimony that he is responsible for payment of \$40/month in medical expenses was accepted by MDHHS as a reporting of information for consideration in Petitioner's future FAP eligibility.

Petitioner's FAP benefit group size justifies a standard deduction of \$158 (see RFT 255). The standard deduction is given to all FAP benefit groups, though the amount varies based on the benefit group size. The standard deduction is subtracted from the countable monthly income to calculate the group's adjusted gross income. Subtracting the standard deduction from Petitioner's running countable income results in an adjusted gross income of \$627.

MDHHS factored Petitioner's housing expenses based on Petitioner's application dated December 20, 2018, which reported monthly housing costs of \$41.67. Petitioner contended that MDHHS should have factored Petitioner's alleged reporting of a higher property tax obligation which includes arrearage payments. Again, Petitioner's testimonial claim of reporting expenses will not be accepted due to the contradiction with his application reporting.⁴

MDHHS credited Petitioner with the standard heat/utility credit of \$543 which is the maximum utility credit available and encompasses all utility obligations. Adding Petitioner's countable housing costs (\$41.67) to Petitioner's utility credit results in total shelter costs (housing + utilities) of \$582 (rounding to nearest dollar).

MDHHS only credits FAP benefit groups with an "excess shelter" expense. The excess shelter expense is calculated by subtracting half of Petitioner's adjusted gross income from Petitioner's total shelter obligation. Petitioner's excess shelter amount is found to be \$272 (rounding up to nearest dollar).

The FAP benefit group's net income is determined by taking the group's adjusted gross income and subtracting the allowable excess shelter expense. Petitioner's FAP benefit group's net income is \$355. A chart listed in RFT 260 is used to determine the proper FAP benefit issuance. Based on Petitioner's group size and net income, Petitioner's proper FAP benefit issuance for April 2019 is \$85 which is the same issuance determined by MDHHS. Thus, other than the budgeting of Petitioner's gross SSI, MDHHS properly determined Petitioner's FAP eligibility.

As an SSI recipient, Petitioner is potentially eligible to receive FAP benefits through the Michigan Combined Application Project (MiCAP). MiCAP is a Food Assistance demonstration project available to persons whose only income is SSI. Potential advantages to clients who receive FAP benefits through MiCAP include a simpler application, a longer benefit period, and eligibility of \$190/month or \$100/month in FAP benefits. Petitioner may pursue MiCAP by calling (877) 522-8050.

⁴ Additionally, property tax arrearages do not appear to be countable expenses in FAP determinations. BEM 554.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly determined Petitioner's FAP eligibility. It is ordered that MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

- (1) Redetermine Petitioner's FAP eligibility beginning April 2019 subject to the finding that Petitioner's gross SSI benefit is \$760/month;
- (2) Issue a supplement of any benefits improperly not issued.

The actions taken by MDHHS are **REVERSED**.

CG/cg



Christian Gardocki

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 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) 763-0155; 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-Ogenaw-Hearings
M. Holden
D. Sweeney
BSC1- Hearing Decisions
MAHS

Petitioner – Via First-Class Mail;;

[REDACTED]
[REDACTED]
[REDACTED]