



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

Date Mailed: November 25, 2019
MOAHR Docket No.: 19-011602
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 November 21, 2019, from Detroit, Michigan. Petitioner appeared and was unrepresented. [REDACTED], Petitioner's spouse, testified on behalf of Petitioner. The Michigan Department of Health and Human Services (MDHHS) was represented by Haysem Hosny, hearing facilitator.

ISSUE

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

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 [REDACTED], 2019, Petitioner applied for FAP benefits. Petitioner's application reported an obligation to pay for heat.¹
2. As of [REDACTED] 2019, Petitioner's household included his spouse.
3. As of [REDACTED] 2019, Petitioner's household gross monthly income was \$[REDACTED] in unearned income.

¹ MDHHS' Hearing Summary stated that Petitioner applied on [REDACTED] 2019. Exhibit A, p. 1. The Hearing Summary contradicts the Notice of Case Action dated [REDACTED] 2019 which included a determination of benefits beginning [REDACTED], 2019. The beginning date of eligibility typically corresponds to the client's application date.

4. As of [REDACTED] 2019, Petitioner's monthly expenses included the following: \$1[REDACTED] in medical, \$[REDACTED] for housing, \$[REDACTED] for child support, and \$[REDACTED] for dependent care.
5. On [REDACTED], 2019, MDHHS determined Petitioner was eligible for \$[REDACTED] in FAP benefits. MDHHS' determination factored \$[REDACTED] in unearned income, \$[REDACTED] in housing expenses, \$[REDACTED] in medical expenses, and credits for non-heat electric and telephone.
6. On [REDACTED], 2019, Petitioner requested a hearing to dispute FAP eligibility beginning [REDACTED] 2019.

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 redetermination of FAP benefits beginning [REDACTED] 2019. Exhibit A, p. 2. A Notice of Case Action dated [REDACTED] 2019, stated that Petitioner was eligible to receive \$[REDACTED] beginning [REDACTED] 2019. Exhibit A, pp. 3-7.

Petitioner's testimony contended that MDHHS erred in determining his FAP eligibility by miscalculating net income. Petitioner's contention assumed that net income for FAP benefits was calculated by subtracting countable expenses from countable income.

BEM 556 outlines the calculations to determine net income. for groups with a senior, disabled, or disable veteran, child care, child support and medical expenses are subtracted from the group's countable income to determine the group's adjusted gross income.² Then, the group's shelter obligation is calculated by adding housing costs and countable standard utility credits. Benefit groups are entitled to an excess shelter deduction which is calculated by subtracting half of a client's adjusted gross income from shelter obligation. The excess shelter deduction is then subtracted from the group's adjusted gross income to determine net income. MDHHS used the proper calculation to determine Petitioner's FAP eligibility; this conclusion does not equate to MDHHS using the correct expenses to determine Petitioner's FAP eligibility.

² Medical expenses are subtracted after applying a \$[REDACTED] copayment.

MDHHS presented budget pages from [REDACTED] 2019 which included all factors in the determination of Petitioner's FAP eligibility. Exhibit A, pp. 17-18. All factors were discussed with Petitioner during the hearing. MDHHS determined Petitioner's FAP eligibility based on the following: a group size of 2, a monthly gross income of [REDACTED], countable medical expenses of \$[REDACTED], housing costs of [REDACTED], a responsibility for non-heat electric and telephone, and no responsibility for heat/cooling. The only dispute raised by Petitioner concerned the credit for heating/cooling.

The heat/utility (h/u) standard covers all heat and utility costs including cooling. BEM 554 (October 2019) p. 15. FAP groups that qualify for the h/u standard do not receive any other individual utility standards. *Id.* MDHHS is to verify heating separate from housing costs at application. *Id.*, p. 16. The heat and utility standard amount is \$518. RFT 255 (October 2019) p. 1.

MDHHS credited Petitioner with standard credits for electricity [REDACTED] and telephone (\$[REDACTED]). Thus, Petitioner is potentially eligible to receive \$[REDACTED] in additional utility credits if it is established that MDHHS improperly deprived Petitioner of the heating/cooling credit.

Petitioner testified that he and his wife are responsible for paying electricity-powered heating and cooling. Petitioner also testified that he reported the obligation on his application requesting FAP benefits; during the hearing, MDHHS acknowledged that Petitioner's application reported a responsibility for heating and cooling. Petitioner's application reporting should have prompted MDHHS to request verification of Petitioner's heating obligation via Verification Checklist. BAM 130 (April 2017) p. 3. No evidence was presented that MDHHS made such a request. Given the evidence, one of two scenarios occurred.

One scenario is that MDHHS did not mail Petitioner a Verification Checklist requesting verification of heat. Under such a scenario, MDHHS procedurally erred by not allowing Petitioner an opportunity to verify his heating/cooling obligation. A redetermination of Petitioner's FAP eligibility would be the appropriate remedy for MDHHS' error.

Alternatively, MDHHS may have requested verification of Petitioner's heating obligation but failed to recognize that Petitioner's heating or cooling is powered by electricity. A plausible scenario is that MDHHS assumed that Petitioner's heating and cooling were gas-powered and Petitioner's assumed failure to return a gas bill to MDHHS justified not issuing the h/u standard credit to Petitioner.

A responsibility for heating and/or cooling is not limited to natural gas-powered heating and/or cooling. FAP groups who pay for cooling (including room air conditioners) are eligible for the h/u standard if they verify they have the responsibility to pay for non-heat electric. BEM 554 (October 2019) p. 16. If Petitioner's heating and cooling are powered by electricity, Petitioner's obligation would not be verifiable by a gas bill. Further, the electric bill which Petitioner did submit to MDHHS (Exhibit A, pp. 14) would be the only

bill that Petitioner could submit to verify his obligation. If MDHHS assumed that Petitioner's heating and cooling were powered by gas, then MDHHS erred by not seeking further verification of his obligation.

Based on the evidence, MDHHS failed to properly verify Petitioner's reported obligation for heating and/or cooling expenses. MDHHS' failure entitles Petitioner to an opportunity to verify his obligation and have his eligibility from his application date updated.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly failed to properly evaluate Petitioner's reported obligation for heating and cooling costs. It is ordered that MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

- (1) Request verification, if necessary, of Petitioner's obligation for electricity-powered heating and/or cooling costs; and
- (2) Redetermine Petitioner's FAP eligibility from his application date dependent upon Petitioner's compliance with the verification request.

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

CG/tm



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 Office of 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

Dawn Tromontine
41227 Mound Rd.
Sterling Heights, MI 48314

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]

cc: FAP: M. Holden; D. Sweeney
Macomb County AP Specialist (4)