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GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]

Date Mailed: February 6, 2020
MOAHR Docket No.: 19-013215
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

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 January 27, 2020 from Detroit, Michigan. The Petitioner's husband, [REDACTED] (Husband), appeared for the hearing and was represented by Petitioner's and his attorney, [REDACTED], from Legal Services of South Central Michigan. The Department of Health and Human Services (Department) was represented by Assistant Attorney General Meghan Schaar. The Department had the following witnesses: Carvin Wright, Eligibility Specialist, and Candace Baker, Family Independence Manager.

ISSUE

Did the Department properly calculate Petitioner's Food Assistance Program (FAP) benefit rate after consideration of Husband's self-employment income?

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, the Department received Petitioner's and Husband's 2018 Form 1040 tax return listing total income as \$20,269.00 and Adjusted Gross Income (AGI) as \$18,837.00.
2. On the same day, the Department received Husband's 2018 Schedule C Profit or Loss from Business statement showing gross receipts or sales as \$48,858.00, total expenses of \$28,589.00, and total Net Profit as \$20,269.00.
3. On [REDACTED] 2019, the Department received Petitioner's new Application for FAP benefits listing self-employment income for Husband in the amount of \$4,071.50 with self-employment expenses of \$1,897.69.

4. On November 27, 2019, the Department issued a Notice of Case Action to Petitioner informing her that effective November 15, 2019, she was eligible for \$51.00 in FAP benefits and effective December 1, 2019, she was eligible for \$96.00 in FAP benefits based upon a group size of five and \$3,053.00 in self-employment income.
5. On December 10, 2019, the Department issued a Verification Checklist (VCL) to Petitioner requesting proof of Husband's "actual receipts" from August, September, October, [sic] 2019 in the monthly amount of \$1,897.69" and indicating "[p]er your November 15, 2019 [sic] you reported the expense for [REDACTED] self employment [sic] income. The Actual receipts are needed to verify his self-employment expenses..." by December 20, 2019.
6. On the VCL, the Department listed business records with receipts, income tax records with receipts, and the DHS-431 Self-Employment Statement with receipts as potential forms of proof.
7. At some point, although the record is unclear and the documents are not date-stamped by the Department, the Department received Husband's [REDACTED] Tax Summary for 2018, a printout with no identifying citation or sources listed on the page except a handwritten statement of "IRS Instructions for Schedule C", and finally a statement prepared by Petitioner's attorneys or social workers listing Husband's "2018 Business Expenses" showing "Expenses, Fees & Tax" as \$11,980.13 and "Car Expenses" as \$10,792.24 using the IRS 2018 mileage rate of \$0.545 times his documented miles of 19,802.28.
8. On December 10, 2019, the Department received Petitioner's request for hearing disputing the Department's calculation of expenses.

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 disputes the Department's calculation of his expenses towards self-employment income. Petitioner asserts that the Department should exclude from consideration of income the 25% fee that [REDACTED] (his pseudo employer, hereinafter Employer) charges and should consider Petitioner's mileage as a verified cost of producing income which would, therefore, be deducted from Petitioner's gross receipts.

The Department asserts that first Petitioner did not verify his expenses via receipts as required by policy, that mileage is not an appropriate mechanism to verify a business expense, that the 25% Employer fee is not verified or deductible as an expense, and that Petitioner's gross receipts are the starting point for consideration of his income.

This analysis shall begin with Department policy. Policy provides that the amount of self-employment income before any deductions is called total proceeds. BEM 502 (October 2019), p. 3. Countable income for purposes of calculating FAP benefits for self-employment income is total proceeds minus the expenses of producing the income. *Id.* Allowable expenses are either the greater of 25% of total proceeds or actual expenses verified by the client. *Id.* Policy provides a list of allowed and not allowed self-employment expenses. Under the list of allowable expenses, the following items appear:

- Identifiable expenses of labor, stock, raw material, seed, fertilizer, etc.
- Interest and principal on loans for equipment real estate or income-producing property
- Insurance premiums on loans for equipment, real estate and other income-producing property
- Taxes paid on income-producing property
- Transportation costs while on the job (example: fuel)
- Purchase of capital equipment
- A child care provider's cost of meals for children
- *Any other identifiable expense of producing self-employment income except those specifically not allowed*

BEM 502, pp. 3-4 (*emphasis added*). Policy specifically states that the following items are not considered self-employment expenses:

- Net loss from a previous period
- *Federal, state, and local income taxes*
- Personal entertainment or other individual business expenses
- Money set aside for retirement
- Depreciation on equipment, real estate, or other capital investments

BEM 502, p. 4 (*emphasis added*). Policy also provides that self-employment income may be verified by a primary source as income tax returns, a secondary source as a DHS-431 Self-employment Statement with all income receipts to support claimed income, or by a third source, the DHS-431 Self-Employment form without receipts. BEM 502, p. 7. To verify self-employment expenses, policy provides that expenses may be verified exclusively by the DHS-431 Self-Employment Statement with receipts. However, policy and the Department agree that FAP policy is derived from the Code of Federal Regulations, Michigan Compiled Laws, Michigan Administrative Code, and federal court orders. BEM 100 (October 2019), p. 3. Each policy or manual item provides a citation to the applicable body of law as its source for the authority to implement the policy. *Id.* Therefore, a review of the federal regulations is necessary to

determine whether the policy is in compliance with the federal regulations and which interpretation of policy and federal regulations is the most accurate, Petitioner's or the Department's.

Federal regulations provide that one of the applicable definitions of income is the gross income from self-employment excluding the costs of doing business or producing self-employment income. 7 CFR 273.9 (b)(1)(ii) & (c)(9). The federal regulations then cite to 7 CFR 273.11 to calculate the costs of producing self-employment income. Under this section of the federal regulations, allowable costs include "but are not limited to" essentially same items as listed by the Department policy. 7 CFR 273.11(b)(1). The federal regulation then again identifies essentially the same items as the Department policy in listing items which may not be counted toward the cost of producing income. 7 CFR 273.11(b)(2). Finally, States are given the opportunity to propose a simplified self-employment expense calculation rather than an itemization of the costs of producing income. 7 CFR 273.11(b)(3)(v). In Michigan, the simplified method allows for the client to have a simple 25% deduction for self-employment expenses rather than a detailed listing of all expenses incurred.

According to federal regulations, a client's case file must contain documentation to support eligibility, ineligibility, or benefit level to a sufficient level which allows a reviewer to decide whether the determination of eligibility was made accurately. 7 CFR 273.2(f)(6). In order to verify household circumstances or ambiguities, the Department should use documentary evidence as a primary sources for most items; however, the State cannot require a specific document to be the only acceptable source of verification. 7 CFR 273.2(f)(4)(i). Finally, the State "must accept any reasonable documentary evidence provided by the household and must be primarily concerned with how adequately the verification proves the statements on the application." 7 CFR 273.2(f)(5)(i)

In calculating Husband's self-employment income, the Department relied upon both Petitioner's assertions from the Application as well as the 2018 Form 1040 and Schedule C showing self-employment income of \$48,848.00 annually or \$4,071.50 monthly. Petitioner argues that the Employer Tax Summary for 2018 figures should be used instead. The Tax Summary states that Husband had "Gross Earnings" of \$47,669.37, "Expenses, Fees and Taxes" of \$11,980.13, and his "Net Payout" was \$35,689.24. It is unclear why the gross receipts from Petitioner's Schedule C do not meet the "Gross Earnings" or "Net Payout" from the Tax Summary as both documents are supposed to reflect income from 2018. However, Petitioner argues that the start of the calculation of Husband's income should begin with the "Net Payout" at \$35,689.24, after Employer's 25% deduction, because Husband never sees the 25% taken by Employer. Policy is not really clear in this situation. However, the Federal Regulations provide that income for self-employment situations is the gross income from the business excluding costs of doing business then cites to another section listing items which are specifically excluded. The exclusion clause that Petitioner points to is simply part of the calculation of income. The subtraction of business expenses as shown in policy is the same as the exclusion of income as shown by the federal regulations. Furthermore, Petitioner has not advanced a sufficient explanation to show how or why

the 25% deduction from Employer is not a cost of producing self-employment income. If not for Employer, Husband would not be producing income in the manner that he is now. The 25% fee from Employer is essentially Husband's entry fee to do business as he does, without it he would be on his own and would not have the benefit of Employer's applications allowing him to quickly find customers who need his services. Therefore, the start of the calculation of self-employment income is the gross income, the gross receipts, the gross sales, the gross earnings, or the total proceeds; each of these names identify the same concept for purposes of self-employment consideration in FAP cases. In Petitioner's case, the starting point is either the gross receipts/sales listed on the Schedule C for 2018 or the Gross Earnings from the Tax Summary for 2018. Given that the Schedule C was a document filed with the Internal Revenue Service, prepared for tax reporting purposes, by a tax professional, and there may be other unidentified sources of income from Husband's self-employment beyond that listed on the Employer Tax Summary, the gross receipts of \$48,858.00 should be utilized. The Tax Summary for 2018 from Employer simply does not provide as many indicia of reliability as the Schedule C. The Department's reliance on Petitioner's tax statements is in accordance with policy and federal regulations.

Turning to the issue of the "Expenses, Fees and Tax" itemization on the Tax Summary from Employer, the Department argues that this deduction from Husband's income cannot be considered because it is unverified and potentially includes the value of items which are specifically prohibited from being considered a cost of producing self-employment income. As noted above, both Department policy and federal regulations state that federal, state, and local income taxes are not allowable costs of producing income. The Tax Summary from Employer states underneath the heading for this item "[f]or a complete breakdown, please refer to table 1 on page 2." The Department asserts that it never received table 1. Petitioner asserts that he believes that he submitted the table, but did not specify when he submitted, how he submitted, or to whom he submitted it. The Department does not have any additional information to clarify what the expenses, fees, and taxes were for nor do they know the value of each individual expense, fee, or tax. The Department's uncertainty as to whether or not the DHS-431 was mailed to Petitioner with the VCL is irrelevant as Petitioner was permitted the opportunity to verify his expenses with business records, income tax records, or the DHS-431 as noted in the Department's request on the VCL and as provided by federal regulations. Therefore, the Department's exclusion of the "Expenses, Fees and Taxes" from consideration was in accordance with policy and federal regulations because when verifying his income and expenses, he failed to provide or provide proof at the hearing that he submitted the only item available to clarify the "Expenses, Fees and Tax." If Petitioner provides verification of these items, the expenses may be eligible for consideration in determining his net self-employment income after consideration of the costs of producing the income.

Next, the parties dispute whether the Tax Summary from Employer showing Husband's mileage for the year and number of completed trips is an expense which can be considered for purposes of FAP. Petitioner argues that nothing in the federal regulations prevents the use of mileage as an expense for calculating self-employment income and expenses. Furthermore, Petitioner argues that there are other areas of

policy governed by the Department including areas of FAP policy which allow mileage to be considered in determinations of eligibility. The Department argues that policy specifically requires the use of receipts and the DHS-431 to verify self-employment business expenses. As seen above, the Department's requirement that self-employment business expense be verified only by the DHS-431 and receipts is not in accordance with federal regulations as the federal regulations specifically state that the State "must accept any reasonable documentary evidence provided by the household" and "acceptable verification shall not be limited to any single type of document." 7 CFR 273.2(f)(4)(i); 7 CFR 273.2(f)(5)(i). The Department provided no reasonable explanation why the verification of Petitioner's mileage could not be used to determine a business expense. In fact, BEM 554 specifically allows for mileage to be considered in determining a cost of transportation for medical treatment or services when budgeting FAP cases. BEM 554 (October 2019), p. 11. BEM 554 even goes so far as to outline what to do with the mileage to convert the mileage amount into a dollar amount.

If actual costs cannot be determined for transportation, allow the cents-per-mile amount at the standard mileage rate for a privately owned vehicle in lieu of an available state vehicle. To find the cents-per-mile amount go to the Michigan Department of Management and Budget at www.michigan.gov/dtmb, select Services & Facilities from the left navigation menu, then select Travel. On the travel page, choose Travel Rates and High Cost Cities using the rate for the current year.

Id. Given that policy clearly allows for the use of mileage to determine costs of medically related transportation, it seems reasonable and appropriate that a client could also verify a self-employment business expense of mileage when the business involved is driving. Therefore, the Department's refusal to consider anything other than receipts with a DHS-431 is not in accordance with federal regulations and the Department has erred in refusing to consider Husband's mileage in determining his self-employment income and expenses.

Turning to the final issue with respect to Husband's self-employment income, when the Department considered Petitioner's eligibility, because the Department did not believe it had any acceptable sources of verification for business expenses, the Department applied the 25% deduction pursuant to policy and allowed by federal regulations. BEM 502, p. 3; 7 CFR 273.11(b)(3)(v). Although the Department was incorrect in this determination, even if the Department used the calculations asserted by Petitioner (mileage of 19,802.28 times the 2018 IRS standard mileage rate of \$0.545 for a total expense of \$10,792.24), the 25% deduction provided by policy is still more favorable to Petitioner (\$48,858*.25=\$12,214.50) because Petitioner failed to verify the "Expenses, Fees and Tax" as shown on the Tax Summary from Employer. It is noted that it is unclear whether the IRS Standard Mileage Rate is the same as the Michigan Department of Management and Budget standard mileage rate allowed for Medical Transportation costs which could, therefore, create a greater or lesser discrepancy between the 25% deduction and the verified expense.

After a review of the entire record, although the Department's assertions in how federal regulations and policy must be implemented are inaccurate in some respects, the actions taken by the Department in calculating Petitioner's self-employment income resulted in a more beneficial outcome for Petitioner given the evidence presented.

Finally, the overarching issue in this case is whether Petitioner's FAP benefit rate was properly calculated. Petitioner did not dispute any other element of the FAP budget including group size, earned income, unearned income, standard deduction, medical expenses, dependent care expenses, child support expenses, housing costs, or any utility expenses. Since no other dispute was presented as to the FAP budget and a review shows that the benefit rate was properly calculated based upon the numbers listed in the Notice of Case Action, the Department properly determined that Petitioner was eligible for FAP in the amount of \$51.00 for November 15, 2019 through November 30, 2019 and \$96.00 for December 1, 2019, ongoing.

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 afforded Petitioner with the correct FAP allotment for November 2019 and December 2019, ongoing.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.

AMTM/



Amanda M. T. Marler

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

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