



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: March 11, 2020
MOAHR Docket No.: 20-000397
Agency No.: ██████████
Petitioner: ██████████

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 March 4, 2020 from ██████████ Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Tonya Gregory, a Pathways to Success worker, and William Shoulders, Family Independence Manager and Success Coach Mentor.

ISSUE

Did the Department properly calculate Petitioner's Food Assistance Program (FAP) benefit rate?

FINDINGS OF FACT

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

1. In July 2019, Petitioner submitted verification of her employment to her Department caseworker Ms. Woods showing that she worked for ██████████ earning \$14.50 per hour for 35 hours per week with a bi-weekly paycheck, the last check having been received on July 09, 2019.
2. In July 2019, Petitioner also verified with the Department that her employment income had stopped effective July 29, 2019 due to an injury at work.
3. On August 7, 2019, the Department issued a Notice of Case Action to Petitioner informing her that effective September 1, 2019, her FAP benefit rate would increase to \$249.00 per month for a group size of two based upon \$789.00 in

unearned income, a \$158.00 standard deduction, a \$58.37 housing expense, and the \$543.00 heat and utility standard deduction (H/U).

4. On November 21, 2019, the Department received Petitioner's request for hearing disputing her August 2019 FAP benefit rate.
5. On December 12, 2019, Petitioner's caseworker changed from Ms. Woods to Ms. Gregory.
6. On December 19, 2019, a hearing was held in Michigan Office of Administrative Hearings and Rules (MOAHR) docket number 19-012551 regarding Petitioner's August 2019 FAP benefit rate.
7. On December 20, 2019, the Administrative Law Judge (ALJ) in MOAHR docket number 19-012551 issued a decision finding that the Department had failed to stop Petitioner's employment income effective August 2019 pursuant to Petitioner's verifications and ordered the Department to recalculate Petitioner's FAP benefit rate for August 2019.
8. On January 6, 2020, the Department issued a Notice of Case Action to Petitioner budgeting \$375.00 in earned income; \$789.00 in unearned income; \$0.00 for dependent care, medical, and child support expenses; \$0.00 for housing expenses; and \$518.00 for the H/U; the effectiveness date of this budget and the actual benefit rate calculated by this budget is unclear as the Department failed to provide the Notice of Case Action.
9. On January 13, 2020, the Department received a Land Contract for Petitioner showing that she pays \$325.00 per month in housing costs; the Department asserts this is the first verification of Petitioner's housing cost and Petitioner disputes the Department's assertion.
10. On January 14, 2020, the Department received a second request for hearing from Petitioner disputing her FAP benefit calculation indicating "Never Bugted [sic] rent in my income said I made income not correct."
11. On the same day, after receiving Petitioner's request for hearing, the Department issued a Verification of Employment to Petitioner after determining there were no income verifications in Petitioner's file.

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 her FAP benefit rate. To determine whether the Department properly calculated Petitioner's FAP benefit rate, an evaluation of the Department's budget calculations is necessary, starting with income. All countable, gross 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 determines a client's eligibility for program benefits based on the client's actual income and/or prospective income. Prospective income is income not yet received but expected. BEM 505 (October 2017), p. 1. In prospecting income, the Department is required to use income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month, discarding any pay if it is unusual and does not reflect the normal, expected pay amounts. BEM 505, pp. 5-7. A standard monthly amount must be determined for each income source used in the budget. BEM 505, pp. 8-9. Income which is received on a bi-weekly basis is averaged and multiplied by 2.15 to determine a standard monthly amount. BEM 505, pp. 8-9.

Neither Petitioner nor the Department disputes that Petitioner's granddaughter receives \$789.00 per month as a Retirement, Survivors and Disability Insurance (RSDI) benefit as a survivor of her deceased mother. This income was properly budgeted by the Department.

However, at the hearing, when questioned about the \$375.00 that the Department budgeted for Petitioner's earned income, the Department was unable to provide an explanation as to how this income was calculated. At first, the Department indicated that income verifications from January 7, 2020 and January 21, 2020 were used to calculate the \$375.00. However, both income verifications had to have been received after the Department issued the Notice of Case Action and therefore were not the basis of the calculation. Next, the Department indicated that it relied upon wages entered in Bridges from October 1, 2019 in the amount of \$1,167.40 and October 15, 2019 in the amount of \$349.60. If this income is averaged together and multiplied by 2.15, the standardized monthly income would be \$1,630.00 (rounded down to the nearest dollar). Clearly this is not the source of the income calculation. In addition, Petitioner's verification of employment from July 2020 shows that she received \$14.50 per hour for 35 hours per week on a bi-weekly basis. When standardized, her monthly income would be \$1,091.00. Again, the Department's calculation is not supported by evidence. Petitioner testified that she believed the Department's income numbers were based upon her receipt of a worker's compensation benefit, and not her employment income. Petitioner received a worker's compensation benefit from September 25, 2019 through November 7, 2019 and at least one of the checks received was of a similar value as to

the amount budgeted on October 1, 2019. Since the Department is uncertain how it arrived at Petitioner's earned income calculation and it is unsupported by any evidence, including the Verification of Employment submitted by Petitioner in July 2019, the Department has not met its burden of proof in establishing that Petitioner's FAP benefits were properly calculated.

After consideration of income, the Department considers all appropriate deductions and expenses. No evidence was presented that the Petitioner or a household member is considered to be Senior, Disabled, or Disabled Veteran. BEM 550. Therefore, she 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.

BEM 554 (January 2020), p. 1; BEM 556 (January 2020), pp. 3-6.

The Department budgeted \$0.00 for a child support and dependent care expense. Petitioner did not dispute that she does not have these expenses. It is assumed, although the Department presented no evidence on the question, that the Department also budgeted the standard deduction of \$161.00 for a group size of three in accordance with Department policy. RFT 255 (October 2019), p. 1.

After consideration of Petitioner's income and these expenses, Petitioner's Adjusted Gross Income (AGI) would be calculated (total gross income minus child support, dependent care, and standard deduction).

Once the Adjusted Gross Income is calculated, the Department must then consider the Excess Shelter Deduction. The Department budgeted \$0.00 for Petitioner's housing expense claiming that Petitioner never verified the expense. Petitioner disputes the Department's assertion and testified that she had provided Ms. Woods a document titled "Resolution of Notice to Quit #2 Land Contract after multiple payment." This document explains that effective April 17, 2019, Petitioner was responsible for a \$200.00 payment for a house on [REDACTED] in [REDACTED] on April 29, 2019; May 13, 2019; and May 27, 2019; and then would be entered into a land contract for \$4,800.00 for the remaining balance. An attached ledger was provided showing Petitioner's payments on the agreement effective August 16, 2019. Given that the Department had previously budgeted \$58.37 per month toward a housing expense and Petitioner's inconsistent or variable payment history, it is likely that the payment was verified and an amount was calculated based upon the previous verification which was never uploaded to Bridges by Ms. Woods. This reasoning is consistent with the Department's history in Petitioner's case of failing to budget verifications and being unable to explain how or why amounts are being budgeted.

Next, the Department budgeted a H/U for Petitioner in the amount of \$518.00 which is consistent with Department policy. RFT 255, p. 1.

Once each utility standard is considered, the housing expense and utility standards are added together for a total housing expense. BEM 556, p. 6. Petitioner's total housing expense is then reduced by half of her AGI. *Id.* If the calculation results in a negative number, Petitioner does not have an excess shelter cost and is not eligible for an Excess Shelter Deduction. *Id.*

If Petitioner is eligible for an Excess Shelter Deduction, the deduction would then be subtracted from her AGI to achieve her Net Income. BEM 556, pp. 5-6. Since the Department did not show how Petitioner's income was calculated and there seems to be a Department error in verification of Petitioner's shelter expense, the Department has not met its burden of proof that Petitioner's FAP benefit was properly calculated.

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 calculated Petitioner's FAP benefit rate with the January 6, 2020 Notice of Case Action.

DECISION AND ORDER

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 benefit rate effective as of the effectiveness date listed on the January 6, 2020 Notice of Case Action;
2. If otherwise eligible, issue supplements to Petitioner for benefits not previously received; and,
3. Notify Petitioner in writing of its decision.

AMTM/jaf



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

DHHS

Denise Ezell
MDHHS-[REDACTED]-Hearings

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