



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 3, 2020
MOAHR Docket No.: 20-000895
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, a telephone hearing was held on March 2, 2020 from ██████████ Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Sheila Crittenden, Family Independence Manager.

ISSUE

Did the Department properly calculate Petitioner's Food Assistance Program (FAP) benefit rate effective January 1, 2020?

FINDINGS OF FACT

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

1. Petitioner is an ongoing FAP recipient.
2. In April 2019, Petitioner completed a Mid-Certification Contact Notice informing the Department that there were no changes in her household circumstances.
3. On May 1, 2019, the Department issued a Notice of Case Action to Petitioner informing her that she was eligible for \$192.00 in FAP benefits per month effective June 1, 2019, based upon \$889.00 unearned income, the \$158.00 standard deduction, \$142.00 in medical expenses, \$475.00 in housing expenses, and the heat and utility standard deduction (H/U) of \$543.00.

4. In September or October 2019, the Department completed an audit of Petitioner's FAP case.
5. During the audit, the Department determined that it had been improperly budgeting outdated medical expenses for two outpatient treatments, health/hospitalization insurance premiums, and her Medicare Part B premium.
6. On October 5, 2019, the Department issued a Notice of Case Action to Petitioner informing her that her FAP benefits were reducing to \$21.00 per month effective November 1, 2019 because of a decrease in her medical expense and housing costs to \$0.00 as well as a change in the H/U to \$518.00 due to a mass update in policy.
7. On December 7, 2019, the Department issued another Notice of Case Action to Petitioner informing her that effective January 1, 2020, her FAP benefits would be reduced to \$16.00 per month due to an increase in her unearned income to \$902.00 per month.
8. On January 17, 2020, the Department received Petitioner's request for hearing disputing the Department's calculation of her FAP benefit rate with special consideration of her income and medical 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 her FAP benefit rate. Ordinarily, since Petitioner submitted her hearing request on January 17, 2020, the only Notice of Case Action issued by the Department that will be reviewed in this case is the Notice of Case Action dated December 7, 2019, because no other notices were issued within the 90 days prior to Petitioner's request for hearing. However, the Department conceded during the hearing that they the Department erred in removing at least some of Petitioner's medical expenses as well as her housing expense from her FAP budget effective November 1, 2019. Policy provides that supplements may be issued to FAP clients when the regular FAP issuance for the current or prior month was less than the

group is eligible to receive based upon a Department error. BAM 406 (July 2013), p. 1. In addition, the supplements can date back for the 12 months before the month in which the client requested a hearing to contest a negative action which resulted in a loss or the local office discovers that a loss occurred. BAM 406, p. 3. Since the Department conceded that there should have been an attempt to verify reoccurring medical expenses as well as the housing expense before removal and because Petitioner's submitted a request for hearing, the Notices of Case Action from October and December 2019 are addressed by this decision.

To determine whether the Department properly calculated Petitioner's FAP benefit rate, the evaluation first starts with consideration of all countable earned and unearned income available to the client; 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. Effective January 1, 2020, Petitioner receives \$903.00 per month as unearned income. This income is received on a monthly basis which does not require further standardization. No evidence was presented regarding any other sources of income.

After consideration of income, the Department considers all appropriate deductions and expenses. Petitioner is a senior, disabled, or disabled veteran (SDV) group member; therefore, she is eligible for the following deductions to income:

- Dependent care expense.
- Medical expenses that exceed \$35.00
- Excess shelter deduction.
- Court ordered child support and arrearages paid to non-household members.
- Standard deduction based on group size.

BEM 550 (January 2017), pp. 1-1; BEM 554 (October 2019), p. 1; BEM 556 (July 2019), pp. 3-6.

No evidence was presented that Petitioner has a dependent care expense or child support expense. Therefore, the Department properly budgeted these items as \$0.00. The Department also budgeted a Standard Deduction of \$161.00 in accordance with Department policy for a group size of one. RFT 255 (January 2020), p. 1; BEM 556, p. 4. Previously the Standard Deduction was \$158.00 per month for a group size of one to three individuals. RFT 255 (October 2018), p. 1. Effective October 1, 2019, the Standard Deduction was changed to \$161.00. Finally, effective October 2019, the Department removed all medical expenses from Petitioner's FAP case because the

expenses had not been verified since 2013, 2014, and 2016. This change carried over to the December Notice of Case Action. The Department conceded that at least one expense was a reoccurring expense (the insurance premium) and that Petitioner last verified there were no changes in her housing circumstances less than six months prior to the removal of the housing expense. Allowable medical expenses include medical and dental care, hospitalization or nursing care, prescription drugs, medical supplies, over-the-counter medication recommended by a doctor, health insurance premiums, Medicare premiums, dentures, hearing aids, prosthetics, glasses prescribed by an eye doctor, medically-related transportation costs, and a home health aide or similar person. BEM 554 (January 2020), pp. 10-11. Policy provides that the Department should request verification of medical expense at application and redetermination, a reported change, or when other factors are questionable. BEM 554, p. 12. Medical expenses dating from 2013 create a questionable situation whether they appear to be reoccurring or not. In addition, the continuation of Petitioner's insurance premium is entirely plausible; and she was entitled to the appropriate deduction if given the opportunity to verify. Therefore, the Department erred in removing Petitioner's medical expenses from her FAP budget effective November 2019.

After consideration of each of these deductions, Petitioner's Adjusted Gross Income (AGI) would be calculated by subtracting each of these expenses from her gross income. Since the Department erred in failing to verify her medical expenses before the removal of the expenses from the budget, the AGI will not be calculated here.

Once the AGI is calculated, the Department must then consider the Excess Shelter Deduction. BEM 554, p. 1; 7 CFR 273.9(d)(6). The Excess Shelter Deduction is calculated by adding Petitioner's Housing Costs to any of the applicable standard deductions and reducing this expense by half of Petitioner's AGI. BEM 556, pp. 4-7; 7 CFR 273.9(d)(6)(ii). Again, the Department reviewed Petitioner's FAP case in October 2019 and removed her housing expense with the October 2019 Notice of Case Action. The change was carried over to Petitioner's December Notice of Case Action. The Department conceded that removal of the expense without seeking verification was inappropriate. It should also be noted that policy provides that a client is only required to verify shelter expenses at Application or when there is a change. Therefore, even if Petitioner's housing expense was 15 years old and there were no new verifications, Petitioner was not required to submit any new verifications until there was a change in the expense. If there was no change in the expense, she was not required to submit anything after Application. The Department erred in removing Petitioner's housing expense. In addition, to the housing expense, the Department considers a client's utility expenses. The heat and utility standard deduction (H/U) covers all heat and utility costs including cooling except actual utility expenses (repairs or maintenance). BEM 554 (October 2019), p. 15. The Department is required to annually review standards such as the H/U and make adjustments to reflect changes in costs. 7 CFR 273.9(d)(6)(iii)(B). Prior to October 2019, the Department provided Petitioner with the H/U of \$543.00 in accordance with policy. RFT 255 (October 2018), p. 1. Effective October 1, 2019, the Department completed the review of standards as required by Federal Regulations and

implemented a new H/U of \$518.00. RFT 255 (October 2019 & January 2020), p. 1. Therefore, the Department's reduction in Petitioner's H/U was in accordance with law and policy. FAP groups that receive the H/U do not receive any other individual utility standards. *Id.* Since the Department erred in removing Petitioner's housing cost, her total housing expense is not calculated here. However, once the total housing expense is calculated, it is reduced by 50% of Petitioner's AGI to achieve her Excess Shelter Deduction. *Id.*

After Petitioner's Excess Shelter Deduction is calculated, it is then subtracted from her AGI to achieve her Net Income. *Id.* Petitioner's Net Income is then compared against the FAP Benefit Issuance Tables for a group size of one to determine her new benefit rate. RFT 260 (October 2019).

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 removed Petitioner's housing expense and medical expenses.

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 eligibility for FAP benefits effective November 1, 2019;
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

Sheila Crittenden
MDHHS-██████████-Hearings
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Petitioner

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