



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: May 21, 2020
MOAHR Docket No.: 20-001543
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

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 May 13, 2020, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Nicole Perkins, Eligibility Specialist.

ISSUE

Did the Department properly determine Petitioner's Food Assistance Program (FAP) benefit 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. Petitioner was an ongoing FAP recipient.
2. On October 24, 2019, Petitioner completed a redetermination related to her FAP benefit case.
3. Petitioner was the sole member of her household.
4. Petitioner had unearned income in the form of Retirement, Survivors and Disability Insurance (RSDI) benefits in the gross monthly amount of \$805.

5. On October 24, 2019, the Department sent Petitioner a Notice of Case Action informing her that she was approved for FAP benefits in the monthly amount of \$█ effective November 1, 2019, ongoing (Exhibit A, pp. 6-10).
6. On █, 2020, Petitioner submitted a request for hearing disputing the Department's actions.

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.

On █, 2020, Petitioner requested a hearing regarding her FAP benefit amount. The Notice of Case Action informing Petitioner of her FAP benefit amount was issued on October 24, 2019. A request for a hearing must be submitted within 90 days from the date of the written notice of case action. BAM 600 (April 2017), p. 6. Petitioner's request for hearing was not timely. However, an exception applies to FAP cases and a request for a hearing disputing the current level of benefits may be made any time within the benefit period. BAM 600, p. 7. "Current" is interpreted to refer to the client's eligibility as of the hearing request month. Based on Petitioner's hearing request submission from █, 2020, Petitioner may dispute February 2020 FAP eligibility ongoing.

In this case, Petitioner was an ongoing FAP recipient. On October 24, 2019, Petitioner completed a redetermination related to her FAP benefit case. The Department determined that Petitioner was eligible for \$█ per month in FAP benefits. The Department presented a FAP budget to establish the calculation of Petitioner's FAP benefit amount (Exhibit A, pp. 15-17).

All countable 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. For RSDI, the Department counts the gross benefit amount as unearned income. BEM 503 (January 2020), p. 28.

Per the budget provided, the Department included \$805 in unearned income in Petitioner's FAP budget. The Department testified that Petitioner receives \$805 in gross

monthly RSDI benefits. Petitioner confirmed that figure was correct. Therefore, the Department properly determined Petitioner's household income.

The deductions to income on the net income budget were also reviewed. There was evidence presented that the Petitioner's group includes a senior/disabled/veteran (SDV). BEM 550. Thus, the group 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.
- Medical deduction.

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

Petitioner's FAP benefit group size of one justifies a standard deduction of \$161. RFT 255 (October 2018), p. 1. There was no evidence presented that Petitioner had any out-of-pocket dependent care, child support expenses or out-of-pocket medical expenses. Therefore, the budget properly excluded any deduction for dependent care, child support or medical expenses.

When calculating the excess shelter deduction, the Department testified that it considered Petitioner's verified housing expense of \$227 and that she was responsible for paying for her phone, entitling her to the telephone standard of \$30. The Department stated that Petitioner was not entitled to the heat/utility standard.

The heat/utility (h/u) standard covers all heat and utility costs including cooling expenses. BEM 554, p. 15. FAP groups that qualify for the h/u standard do not receive any other individual utility standards. BEM 554, p. 15. FAP groups whose heat is included in the cost of their monthly rent may still be eligible for the h/u standard if: they are billed for excess heat payments from their landlord; they have received a home heating credit in an amount greater than \$20 for the applicable period; or they have received a Low Income Home Energy Assistance Payment (LIHEAP) or a LIHEAP payment was made on their behalf in an amount greater than \$20 for the applicable period. BEM 554, pp. 15-19. Additionally, FAP groups who pay cooling (including room air conditioners) are eligible for the h/u standard if they verify their responsibility to pay for non-heat electric expenses. BEM 554, p. 16. FAP groups not eligible for the h/u standard who have other utility expenses or contribute to the costs of other utility expenses are eligible for the individual utility standards. BEM 554, p. 21.

The Department testified that an interview was completed with Petitioner on October 24, 2019. Petitioner reported that all of her utilities were included in her rent. The Department also presented a shelter verification submitted by Petitioner on January 17, 2020 (Exhibit A, pp. 12-14). Per the verification provided, all of Petitioner's utilities are included in her rent, with the exception of a monthly charge for air conditioning.

Petitioner does not have a heating expense. Petitioner is responsible for cooling costs, but she is not responsible for non-heat electric. Per policy, to qualify for the h/u standard for cooling costs, the client must be responsible for their non-heat electric costs. BEM 554, p. 16. Therefore, the Department correctly determined that Petitioner was not eligible for the h/u standard.

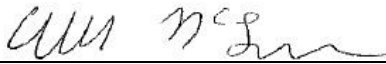
In calculating the excess shelter deduction of \$0, the Department stated that it considered Petitioner's verified housing expense of \$227 and that she was responsible for paying for her phone, entitling her to the telephone standard of \$30. BEM 554, pp. 14-15. The Department testified when calculating Petitioner's excess shelter amount, they added the total shelter amount and subtracted 50% of the adjusted gross income, which resulted in a deficit. Therefore, the Department correctly determined Petitioner was not entitled to an excess shelter deduction.

The FAP benefit group's net income is determined by taking the group's adjusted gross income and subtracting the allowable excess shelter expense. After subtracting the allowable deductions, the Department properly determined Petitioner's adjusted gross income to be \$644. As Petitioner was not entitled to an excess shelter deduction, her net income is also \$644. A chart listed in RFT 260 is used to determine the proper FAP benefit issuance based on the net income and group size. Based on Petitioner's net income and group size, Petitioner's FAP benefit issuance is \$█. Therefore, the Department properly calculated Petitioner's FAP benefit amount.

DECISION AND ORDER

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 acted in accordance with Department policy when it determined Petitioner's FAP benefit amount. Accordingly, the Department's decision is **AFFIRMED**.

EM/cg



Ellen McLemore
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

Via Email:

MDHHS-Macomb-20-Hearings
M. Holden
D. Sweeney
BSC4- Hearing Decisions
MOAHR

Petitioner – Via First-Class Mail:

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