



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

Date Mailed: September 25, 2020
MOAHR Docket No.: 20-004929
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 hearing was held on September 17, 2020, via telephone conference line. Petitioner participated and was represented. [REDACTED], Petitioner's daughter, testified and participated as Petitioner's authorized hearing representative (AHR). The Michigan Department of Health and Human Services (MDHHS) was represented by Silvester Williams, supervisor.

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 June 24, 2020, Petitioner submitted a Redetermination form to MDHHS which reported \$1,930.71 in annual prescription costs and \$275 in additional annual medical expenses. Petitioner also submitted to MDHHS a medical bill listing \$150 in medical expenses from June 24, 2019, through February 21, 2020, and payments of \$125 towards medical expenses for unspecified services on unspecified dates.
2. As of July 2020, Petitioner was an ongoing recipient of FAP benefits, disabled and/or senior, and the only member of a FAP group.
3. As of July 2020, Petitioner received monthly Retirement, Survivors, and Disability Insurance (RSDI) of \$1,506 and a monthly pension of \$440.15.

4. As of July 2020, Petitioner had no dependent care or child support expenses.
5. As of July 2020, Petitioner had monthly medical expenses of \$144.60 from a Medicare premium.
6. As of July 2020, Petitioner was responsible for \$1,040 in monthly housing expenses and a heat obligation.
7. On July 10, 2020, MDHHS determined that Petitioner was eligible for \$16 in FAP benefits for a benefit period from August 2020 through July 2021.
8. On July 22, 2020, Petitioner's AHR requested a hearing to dispute Petitioner's FAP eligibility.
9. As of July 22, 2020, Petitioner had not submitted proof of prescription expenses.

CONCLUSIONS OF LAW

The Food Assistance Program [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. MDHHS 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's AHR requested a hearing to dispute Petitioner's FAP eligibility. Exhibit A, pp. 4-6. A Notice of Case Action dated July 10, 2020, stated that Petitioner was eligible for \$16 in FAP benefits effective August 2020 based on a net income of \$954.¹ Exhibit A, pp. 11-15.

BEM 556 outlines the factors and calculations required to determine a client's net income. FAP net income factors group size, countable monthly income, and relevant monthly expenses. MDHHS presented Petitioner's partial FAP budget from August 2020 which listed relevant budget factors and calculations. Exhibit A, pp. 19-20. Additionally, a budget summary within the notice dated July 10, 2020, listed income and expenses factored in the determination. Exhibit A, p. 12. During the hearing, all budget factors were discussed with Petitioner's AHR.

¹ Since at least April 2020, Petitioner received \$194 in monthly FAP benefits: the maximum amount of FAP benefits for a 1-person group RFT 260 (October 2019) p. 1. Petitioner only received the maximum FAP issuance due to a temporary policy during the COVID-19 pandemic allowing FAP recipients to receive the maximum issuance amount for the group. As the policy is only temporary, an analysis of Petitioner's ongoing FAP eligibility is appropriate.

In determining Petitioner's FAP eligibility, MDHHS factored a group size of one.² Petitioner's AHR did not dispute the group size factored by MDHHS.

Petitioner's FAP eligibility was based on \$1,946 in unearned income. Petitioner's countable unearned income incorporated gross monthly RSDI of \$1,506 and a monthly pension of \$440.15. For FAP benefits, gross RSDI is countable. BEM 503 (April 2019) p. 29. For FAP, MDHHS counts the gross amount of retirement income. *Id.* Thus, all of Petitioner's gross monthly RSDI and pension are countable in determining FAP eligibility. Adding Petitioner's RSDI and pension results in \$1,946 in monthly income (dropping cents).

MDHHS uses certain expenses to determine net income for FAP eligibility and benefit levels. BEM 554 (October 2015), p. 1. For groups without a senior (over 60 years old), disabled or disabled veteran (SDV) member, MDHHS considers the following expenses: childcare, excess shelter (housing and utilities) up to a capped amount and court-ordered child support and arrearages paid to non-household members (see *Id.*). For groups containing SDV members, MDHHS also considers the medical expenses above \$35 for each SDV group member(s) and an uncapped excess shelter expense. Countable expenses are subtracted from a client's monthly countable income. It was not disputed that Petitioner was senior and/or disabled.

MDHHS factored \$0 child support and dependent care expenses for Petitioner; Petitioner's AHR did not dispute these expenses. For medical expenses, MDHHS factored Petitioner's Medicare premium of \$145.60 and a monthly copayment of \$35 resulting in \$110 (dropping cents) in countable expenses. Petitioner's AHR alleged that Petitioner had additional medical expenses.

Petitioner submitted a Redetermination to MDHHS on June 18, 2020, reporting annual prescription expenses of \$1,930.71 and unspecified medical expenses of \$275. Exhibit A, pp. 21-30. With her Redetermination, Petitioner submitted documentation listing \$150 in unpaid medical expenses billed in May 2020 covering services from June 24, 2019, through February 21, 2020. Exhibit B, p. 1. Petitioner additionally submitted a list of \$125 in payments to medical providers for unspecified services. Petitioner's AHR contended that Petitioner was entitled to a credit for all medical expenses.

MDHHS is to estimate an SDV person's medical expenses for the benefit period. BEM 554 (January 2020) p. 8. The estimate is to be based on verified allowable medical expenses, available information about the SDV member, and reasonable anticipatable changes. *Id.*, pp. 8-9. Changes should only be processed if reported and verified. *Id.*, p. 9. Acceptable verifications include current bills from the provider listing expenses to be paid by health insurance, health insurance company statements, and written statements from the health care provider. *Id.*, p. 10.

² See BEM 212 for policies on determining group size for FAP benefits.

Groups that do not have a 24-month benefit period may choose to budget a one-time-only medical expense for one month or average it over the balance of the benefit period. *Id.*, p. 9. MDHHS will allow the expense in the first benefit month the change can affect. *Id.*

Medical expenses are only allowed for bills that are not overdue. *Id.*, p. 11. Medical bills that are not overdue would be those that are: incurred for the current benefit month, billed for the current month, and/or the client made a payment arrangement before the bill became overdue. *Id.*

Concerning Petitioner's prescription costs of \$1,930.71, it was not disputed that Petitioner had not verified the expenses before requesting a hearing. Without verification, MDHHS properly did not credit Petitioner with the expenses.³

Concerning Petitioner's \$125 in medical payments, Petitioner's documentation listed dates and amounts of Petitioner's payments. Notably, dates of medical services were not listed. Without dates of medical service, MDHHS cannot determine if the expense is overdue. Rejecting Petitioner's documentation as proper verification of medical expenses is consistent with MDHHS policy which does not list a client's payment history as acceptable verification. The evidence established that MDHHS properly did not credit Petitioner for the \$125 in medical expenses.

Concerning Petitioner's \$150 in other unpaid medical expenses, MDHHS failed to establish why they were not factored in Petitioner's ongoing eligibility. MDHHS suspected that the expenses may have been factored in July 2020 when \$237 in medical expenses were counted. MDHHS's suspicions did not explain how Petitioner's \$145 Medicare premium, \$150 in expenses, and \$35 copayment results in \$237 in countable expenses. Even if some portion of the \$150 was applied to Petitioner's budget in July 2020, MDHHS did not explain why the expenses were not spread over Petitioner's certified 12-month period beginning in August 2020, as Petitioner's AHR testified that she wanted.

Given the evidence, MDHHS failed to establish that \$150 of Petitioner's reported medical expenses were properly processed. As a remedy, Petitioner is entitled to a reprocessing of medical expenses. Only for the simplification of the remaining budget analysis, it will be accepted that Petitioner's medical expenses were properly credited by MDHHS to be \$110.

Petitioner's FAP benefit group size justifies a standard deduction of \$161 (see RFT 255). The standard deduction is given to all FAP benefit groups, though the amount varies based on the benefit group size. The standard deduction and countable expenses are subtracted from the countable monthly income to calculate the group's

³ It was not disputed that Petitioner submitted documentation of medical expenses after requesting the hearing. Though Petitioner's documentation is not relevant to this decision, it is relevant to Petitioner's future FAP eligibility. Petitioner may separately request a hearing if she disputed how her later submission was processed.

adjusted gross income. Subtracting the standard deduction and countable expenses from Petitioner's income results in an adjusted gross income of \$1,675.

MDHHS credited Petitioner with monthly housing expenses of \$1,040. Petitioner's AHR did not allege additional housing expenses. Petitioner was credited with a standard heating/utility (h/u) credit of \$518. RFT 255 (October 2019) p. 1. Generally, the h/u credit covers all utility expenses and is the maximum credit available.⁴ Adding Petitioner's housing and utility credits results in a total shelter obligation of \$1,558.

MDHHS only credits FAP benefit groups with an "excess shelter" expense. The excess shelter expense is calculated by subtracting half of Petitioner's adjusted gross income from Petitioner's total shelter obligation. Petitioner's excess shelter amount is \$721 (rounding up to nearest dollar).

The FAP benefit group's net income is determined by subtracting the excess shelter expense from the group's adjusted gross income; doing so results in \$954 in net income for Petitioner's group. A chart listed in RFT 260 is used to determine the proper FAP benefit issuance. Based on Petitioner's group size and net income, Petitioner's proper FAP benefit issuance for August 2020 is \$37; the same issuance amount was calculated by MDHHS. Thus, other than the processing of \$150 in medical expenses, MDHHS properly determined Petitioner's FAP eligibility.

⁴ MDHHS allows additional credits for "actual utility expenses". Such expenses are only allowed for utility installation charges, water well installation and maintenance, and septic installation and maintenance. BEM 554 (October 2019) p. 15. There was no evidence of applicable exceptions.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly processed Petitioner's FAP eligibility. It is ordered that MDHHS commence the following actions within 10 days of the date of mailing of this decision:

- (1) Reprocess Petitioner's reported \$150 in medical expenses submitted on June 24, 2020, subject to the findings that MDHHS failed to establish that the expenses were processed, and that Petitioner requested the expenses credited over an entire benefit period; and
- (2) Issue supplements, if any, and notice in accordance with policy.

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

CG/tlf



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

Via Email:

MDHHS-Oakland-6303-Hearings
BSC4 Hearing Decisions
M. Holden
D. Sweeney
MOAHR

Petitioner

[REDACTED]

Authorized Hearing Rep.

[REDACTED]