



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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[REDACTED]
[REDACTED]

Date Mailed: November 2, 2020
MOAHR Docket No.: 20-006160
Agency No.: [REDACTED]
Petitioner: [REDACTED] [REDACTED]

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 October 26, 2020 via telephone conference. Petitioner appeared and represented himself. The Department of Health and Human Services (Department) was represented by LaRonda McKenzie, Assistance Payment Supervisor, and Edward Maddox, Eligibility Specialist.

ISSUE

Did the Department properly calculate Petitioner's monthly Food Assistance Program (FAP) allotment?

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 recipient of FAP benefits.
2. Petitioner is the only member of his FAP group.
3. Petitioner receives monthly Retirement, Survivors and Disability Insurance (RSDI) benefits based on his age and disability.
4. Petitioner has Medicare coverage, including Part B coverage.
5. Petitioner's monthly rent is \$701 and includes all utilities.
6. Petitioner has an outstanding indebtedness to the Department due to an overpayment that was determined in an administrative hearing decision issued on

August 22, 2016 by administrative law judge (ALJ) Michael Bennane under Michigan Administrative Hearing System (MAHS, now Michigan Office of Administrative Hearings and Rules (MOAHR)) docket no. 15-015292 (Exhibit C, pp. 10-16).

7. On July 1, 2020, the Department sent Petitioner a Notice of Case Action notifying him that his FAP benefits for August 2020 to October 2020 were increasing to \$174 monthly (Exhibit A, pp. 14-18).
8. On July 18, 2020, the Department sent Petitioner a Notice of Case Action notifying him that his FAP benefits had decreased to \$28 monthly for the period August 1, 2020 to October 31, 2020. The change was due to the removal of the heat and utility standard deduction from the calculation of Petitioner's monthly FAP allotment. (Exhibit A, pp. 9-13).
9. On September 9, 2020, the Department sent Petitioner a Notice of Case Action notifying him that his FAP benefits had increased to \$70 for October 2020. The \$70 FAP allotment took into consideration \$20 that was withheld to repay an overissuance. (Exhibit A, pp. 6-11).
10. The September 9, 2020 Notice also advised Petitioner that he was entitled to a FAP supplement of \$119 for the period of April 1, 2020 to September 30, 2020 but that \$70 of this supplement would be withheld and applied to the previously established overissuance, leaving him with a \$49 FAP supplement. The \$70 withheld reduced Petitioner's outstanding indebtedness to the Department from \$426 to \$356. (Exhibit A, pp. 6-11).
11. On [REDACTED] 2020, the Department processed Petitioner's verbal request for a hearing to dispute his monthly FAP allotment.

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.

Petitioner made a verbal request for hearing to dispute the Department's actions concerning his FAP case. At the hearing, the Department presented evidence showing that Notices of Case Action had been sent to Petitioner notifying him that his FAP

benefits for August to October 2020 had been reduced from \$174 to \$28 and then his October 2020 benefits were increased to \$70. The September 9, 2020 Notice of Case Action also notified Petitioner that he was under-issued \$119 in FAP benefits for April to September, that \$70 from this amount would be applied to his outstanding indebtedness and he would received a \$49 FAP supplement for this period. The Department also confirmed that, as a result of the Covid pandemic emergency, FAP recipients had been issued supplements so that they would receive the maximum FAP allotment for the group size between March and October 2020 and that Petitioner had received such a supplement so that his FAP allotment for March through September 2020 totaled \$194 monthly and for October 2020 totaled \$204. These were the maximum monthly FAP benefits clients who were the only members of their FAP groups were eligible to receive those months. RFT 260 (October 2019 and 2020), p. 1. Petitioner confirmed that he had received the monthly supplements. Because Petitioner has no loss of benefits for this period, the most recent budget was reviewed for consideration of Petitioner's current level of FAP benefits. BAM 600 (January 2020), p. 5.

The FAP budget used to calculate Petitioner's October 2020 benefits, as shown on the September 9, 2020 Notice of Case Action, was reviewed with the Department and Petitioner (Exhibit A, p. 4). The budget showed unearned income of \$1,017, which the Department testified was Petitioner's RSDI income. However, Petitioner submitted a March 6, 2020 letter from the Social Security Administration (SSA) that showed that, effective February 2020, Petitioner received \$1,021.20 in monthly RSDI benefits (Exhibit B). Petitioner explained that his \$1,021 RSDI payment was reduced to \$971 because \$50 was being withheld by SSA due to overpayment. Petitioner's testimony was consistent with the information on the March 6, 2020 SSA letter. Department policy provides that amounts deducted by an issuing agency to recover a previous overpayment or ineligible payment are **not** part of gross income and are excluded as income. BEM 500 (July 2020), p. 6. Therefore, the Department failed to show that it properly calculated Petitioner's monthly earned income for FAP purposes.

Because Petitioner receives RSDI based on his age and disability, for FAP purposes Petitioner is a senior/disabled/veteran (SDV) household member, and he is eligible for the following deductions to income: the standard deduction based on group size; a child care deduction; a child support deduction; a medical expense deduction for all out-of-pocket expenses in excess of \$35; and an excess shelter deduction. See BEM 550 (October 2020), pp. 1-2; BEM 554 (August 2020), p. 1; BEM 556 (January 2020), pp. 4-6. The budget on the notice of case action showed the following deductions: a \$167 standard deduction; a \$110 monthly medical deduction; a \$701 monthly housing expense; and a \$29 telephone standard deduction. Because there was no evidence that Petitioner incurred any child care or child support expenses, the budget properly showed no deductions for these items.

Based on Petitioner being the only member of his FAP group, the standard deduction was properly identified as \$167. RFT 255 (October 2020), p. 1; BEM 212 (October 2020), p. 1. The Department explained that the medical expense was based on the Department budgeting Petitioner's Part B Medicare premium. Based on the March 6,

2020 letter showing that Petitioner was responsible for \$144.60 for his premium, the budget properly showed monthly expenses of \$110, the excess of the premium amount over \$35. Petitioner contended that the State paid for his Part B premium, but based on the March 6, 2020 letter and the Department's testimony that the Single-Online Query (SOLQ) for Petitioner showing no State payment of the premium as of the hearing date, there is no evidence to refute the Department's use of \$110 for medical expenses.

The final deduction Petitioner is eligible to receive, the excess shelter deduction, takes into consideration his monthly housing expense and a Department standard utility expense based on the utilities he is responsible for paying. FAP groups that have a heating expense or contribute to the heating expense separate from rent payments or who pay for cooling (including room air conditioners) are entitled to the heat and utility (h/u) standard, which is the most advantageous utility standard. BEM 554, pp. 15-17, 20. FAP groups whose heat is included in their rent or fees are not eligible for the h/u standard, unless they are billed for excess heat payments by their landlords. BEM 554, p. 17. Likewise, FAP groups whose electricity is included in rent are not eligible for the h/u standard unless their landlords bill them separately for excess cooling. BEM 554, p. 20. An individual not responsible for heat or electric may be nonetheless be eligible for the h/u standard if in the 12 months preceding the redetermination the individual received either a LIHEAP payment (including a State Emergency Relief State Emergency Relief (SER) energy-related payment) or a home heating credit (HHC) in an amount greater than \$20. BEM 554, pp. 16-19.

FAP groups who have no heating/cooling expense and, as such, are not eligible for the h/u standard deduction, but have, or contribute to the cost of, other utility expenses (for non-heat electric, water and/or sewer, telephone, or cooking fuel) are eligible for the individual utility standards in the amount identified in RFT 255. The Department must use the individual standard for *each* utility the FAP group has responsibility to pay. BEM 554, p. 21.

Petitioner confirmed that he had monthly housing expenses of \$701 and his rent included heat and utilities. There was no evidence that Petitioner was eligible for the h/u standard deduction under the other criteria referenced above. Therefore, the Department properly excluded the h/u standard utility deduction. There was no evidence that Petitioner was responsible for any utility expenses other than telephone, and the budget properly showed the standard telephone deduction of \$29 beginning October 2020. RFT 255, p. 1.

The FAP budget also showed that Petitioner owed the Department for an overpayment following a 2016 administrative hearing decision that found that he had committed an intentional program violation (IPV) and was overissued \$1,226 in FAP benefits (Exhibit C, pp. 10-16). Petitioner did not dispute that he had an outstanding indebtedness to the Department. Department policy provides that the Department may administratively recoup for the repayment of overissued benefits from a client's active FAP case. BAM 725 (October 2017, p. 6). In FAP cases where an indebtedness from the client to the Department is due to an IPV, current FAP benefits are reduced for recoupment by a

standard administrative recoupment percentage of 20% (or \$20, whichever is greater). BAM 725, p. 7. Additionally, FAP supplements to restore lost benefits may be used in part or in whole to repay overissuances. BAM 725, p. 8.

Because there continues to be an overissuance due by Petitioner to the Department, the Department is entitled to recoup at least \$20 from Petitioner's monthly FAP allotment and to offset any supplements and apply them to the outstanding indebtedness. Therefore, the budget in the September 9, 2020 Notice of Case Action properly showed that \$20 in FAP benefits were withheld to repay the overissuance. Additionally, the Department could apply \$70 of the \$119 supplement due to Petitioner for the under-payment from April 2020 to September 2020 towards the indebtedness.

Based on the foregoing, the Department showed that it considered the correct information in calculating the deductions to income but did not act in accordance with Department policy in calculating Petitioner's income. Although not discussed at the hearing, it appears that Petitioner's FAP certification period will be expiring. If so, Petitioner is advised that the Department may likely request updated verifications and issue a new Notice of Case Action. Petitioner is advised that he may request a hearing if he disputes any updated Department actions.

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. Recalculate Petitioner's FAP benefits for October 2020 ongoing;
2. If eligible, issue supplements for benefits Petitioner is due, if any; and
3. Notify Petitioner in writing of its decision.

ACE/tlf



Alice C. Elkin
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-Wayne-76-Hearings
BSC4 Hearing Decisions
M. Holden
D. Sweeney
MOAHR

Petitioner – Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]