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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]

Date Mailed: December 23, 2020
MOAHR Docket No.: 20-006757
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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 December 14, 2020, from Detroit, Michigan. Petitioner appeared for the hearing and represented himself. The Department of Health and Human Services (Department) was represented by Gloria Bell, Eligibility Specialist and Gloria Thompson, Family Independence Manager.

ISSUE

Did the Department properly calculate the amount of Petitioner's Food Assistance Program (FAP) benefits?

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. Petitioner was previously approved for FAP benefits of \$111 for the month of October 2020. The October 2020 FAP EDG Net Income Results budget also reflects a child support deduction of \$348. (Exhibit A, p.21)
2. In connection with a redetermination, Petitioner's eligibility to receive FAP benefits was reviewed. On the redetermination, Petitioner reported that he has monthly court ordered child support arrearage expenses for two adult children. (Exhibit A, pp. 25-29)
3. With his redetermination, Petitioner submitted a [REDACTED], 2020 Notice of Income Tax Refund Used for Debts for the 2019 tax year showing that his \$839 tax refund

was being held to pay an outstanding \$41,134 child support debt to the MDHHS Wayne County Friend of the Court. (Exhibit A, p. 6)

- a. Petitioner also submitted an April 15, 2020 letter from the U.S. Department of Treasury, Bureau of Fiscal Services informing him that his \$1,200 payment from the Internal Revenue Service (IRS) was applied to a delinquent debt that he owed, specifically, a child support debt to the Wayne County Friend of the Court Child Support Unit. (Exhibit A, p. 8)
4. On October 6, 2020, the Department sent Petitioner a Notice of Case Action advising him that effective November 1, 2020, he was approved for FAP benefits in the amount of \$16. (Exhibit A, pp. 9-10)
5. On or around October 22, 2020, Petitioner filed a request for hearing, disputing the calculation of his FAP benefits, asserting that his child support payments should be considered. (Exhibit A, p.3)

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 disputed the decrease in his FAP benefits to \$16 effective November 1, 2020. At the hearing, the Department explained that after processing Petitioner's redetermination, it removed the previously included child support deduction from Petitioner's FAP budget, as verification of a monthly child support expense was not provided. The Department testified that it determined Petitioner was eligible for \$16 in monthly FAP benefits, beginning November 1, 2020. The Department presented a FAP EDG Net Income Results Budget which was thoroughly reviewed to determine if the Department properly calculated the amount of Petitioner's FAP benefits. (Exhibit A, pp. 12-13).

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 2020), pp. 1 – 5. The Department considers the gross amount of money earned from Retirement Survivors Disability Insurance (RSDI) or Social Security in the calculation of unearned income for purposes

of FAP budgeting. BEM 503 (January 2020), pp. 28-29. The budget shows that the Department concluded Petitioner had gross unearned income from RSDI in the amount of \$1,472. Petitioner confirmed that the amount was correct and an SOLQ was presented in support of the Department's calculation. Thus, the unearned income was properly calculated.

The deductions to income on the net income budgets were also reviewed. Petitioner's FAP group includes a senior/disabled/veteran (SDV) member. BEM 550 (October 2020), pp. 1-2. Groups with one or more SDV members are eligible for the following deductions to income:

- Dependent care expense.
- Excess shelter.
- Court ordered child support and arrearages paid to non-household members.
- Medical expenses for the SDV member(s) that exceed \$35.
- Standard deduction based on group size.
- An earned income deduction equal to 20% of any earned income.

BEM 554 (August 2020), p. 1; BEM 556 (January 2020), p. 1-8.

In this case, Petitioner's group did not have any earned income, thus, there was no applicable earned income deduction. There was no evidence presented that Petitioner had any out-of-pocket dependent care or medical expenses; therefore, the budget properly did not include any deduction for dependent care or medical expenses. Although Petitioner testified that after his hearing request, the Department closed his Medicare Savings Program (MSP) case and he was responsible for Medicare Premiums, based on the information available at the time the redetermination was processed, there was no applicable medical deduction. Petitioner was advised that if he disputed the closure of his MSP case, he was entitled to request a hearing to have the issue addressed. See BAM 600.

The Department properly applied a standard deduction of \$167 which was based on Petitioner's confirmed group size of one. RFT 255 (October 2020), p. 1. With respect to the excess shelter deduction of \$405, the Department properly applied the \$547 heat and utility standard and considered Petitioner's responsibility for monthly rent in the confirmed amount of \$510. (Exhibit A, p.10).

The budget reflects a child support deduction of \$0, which Petitioner disputed. Child support expenses are allowed for (i) the amount of court-ordered child support and arrearages paid by the household members to non-household members in the benefit month, (ii) court-ordered third party payments (landlord or utility company) on behalf of a non-household member, and (iii) legally obligated child support paid to an individual or agency outside the household for a child who is now a household member, provided the payments are not returned to the household. BEM 554, p. 6. The Department is not to consider more than the legal obligation if the client is up to date on their child support payments. However, if they are behind and making arrearage payments, the

Department will allow the total amount paid even if it exceeds the court-ordered amount. Current and arrearage child support expenses must be paid to be allowed. BEM 554, pp.6-7. Expenses are used from the same calendar month as the month for which benefits are being determined and remain unchanged until the FAP group reports a change. BEM 554, p. 3. To verify the household's actual child support and arrearages paid, the Department will consider: wage withholding statements, verification of withholding from unemployment compensation or other unearned income, statements from the custodial parent regarding direct payments, statements from the custodial parent regarding third party payments the noncustodial parent pays or expects to pay on behalf of the custodial parent, and/or data obtained from the state's Child Support Enforcement System (MICSES).BEM 554, pp. 6-7.

The Department testified that Petitioner is not eligible for a child support deduction because he does not have a monthly child support expense. Although a prior consolidated inquiry child support search showed that Petitioner previously had a responsibility for monthly child support arrearages for two adult children who are not members of Petitioner's household, the current consolidated inquiry search performed in connection with the redetermination did not reflect any child support arrearage payments. The SOLQ further did not show any withholding from Petitioner's monthly RSDI for child support. (Exhibit A, pp. 7-11).

Petitioner argued that in 2020, he paid \$2,039 in child support arrearages that should be considered by the Department as a child support deduction on his FAP budget. Petitioner did not dispute that since he has been receiving RSDI and not working, he has made no monthly child support arrearage payments and no payment has been withheld from his monthly RSDI. Petitioner asserted that his yearly tax refund is garnished to pay for child support arrearages and that in April 2020, his \$1,200 stimulus payment was garnished to pay the arrearages. Petitioner provided written verification that in April 2020, his \$1,200 stimulus payment and in June 2020, his \$839 tax refund were withheld to pay past child support debts. Petitioner asserted that the one-time payments towards his child support arrearages should either be divided and applied to all the months of the year or applied to the months in which they were paid, April 2020 and June 2020.

As referenced above, Department policy provides that court ordered child support arrearages paid to non-household members can be considered deductions to income. Economic Stability Administration (ESA) Memorandum 2020-22 COVID-19 Guidance on CARES Act Economic Impact Payments indicates that the economic impact payment of \$1,200 paid to eligible individuals from the federal government pursuant to the Coronavirus Aid, Relief, and Economic Security (CARES) Act is excluded as income for all assistance programs. See ESA Memo 2020-22. Therefore, because the \$1,200 is not considered countable income, any child support paid using the funds cannot be considered a deduction to income on the FAP budget. With respect to the \$839 tax refund withheld to pay child support arrearages in June 2020, while it could be argued that Petitioner may be eligible for a child support deduction for arrearage payments made in that benefit month, the Department testified that Petitioner has received the

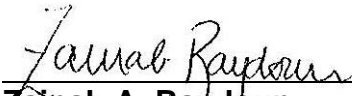
maximum monthly amount of FAP benefits for his group size of one in accordance with ESA Memorandum 2020-15, COVID-19 Response Emergency Food Assistance Allotment, which provides that active FAP groups who are not currently receiving the maximum amount of benefits for their group size will receive a supplement to bring their benefit amount up to the maximum amount allowed for their group size. Additionally, groups already receiving the maximum monthly benefit amount will not receive an additional supplement. See ESA Memo 2020-15. This policy has been in effect since March 2020 and continued through December 2020. The Department testified that Petitioner has received the maximum amount of FAP benefits during the period at issue. Petitioner did not dispute the Department's testimony or present any evidence to the contrary. Therefore, because Petitioner would not have been eligible to receive FAP benefits in any amount greater than the maximum allowed per Department policy, the exclusion of the child support deduction, if determined allowable, is considered harmless error and a moot issue.

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 calculated the amount of Petitioner's FAP benefits.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.

ZB/jem



Zainab A. Baydoun
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-17-Hearings
BSC4-HearingDecsions
M. Holden
D. Sweeney
MOAHR

Petitioner – Via First-Class Mail:

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