



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

ORLENE HAWKS
DIRECTOR

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Date Mailed: January 25, 2019
MAHS Docket No.: 18-012398
Agency No.: [REDACTED]
Petitioner: [REDACTED]

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 January 22, 2019, from Detroit, Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Amber Gibson, Hearings Facilitator.

ISSUE

Did the Department properly calculate Petitioner's Food Assistance Program (FAP) benefit rate?

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. On October 22, 2018, the Department approved Petitioner for the Medicare Savings Program (MSP) which meant that the Department would begin paying for her Medicare Part B premium and retroactively dated it to September 1, 2018.
3. On November 7, 2018, the Department issued a Notice of Case Action to Petitioner informing her that her FAP benefits would decrease effective December 1, 2018, to \$[REDACTED] because her medical expense for the Medicare Part B premium was removed from consideration in her FAP budget.

4. On November 14, 2018, the Department received Petitioner's verbal request for hearing to dispute the calculation of her FAP benefits.

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 calculation of her FAP benefit rate effective December 1, 2018.

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. 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.

The Department testified and Petitioner agreed that she receives a Social Security benefit of \$[REDACTED] per month for January 2018 through December 2018, and \$[REDACTED] for January 2019 through December 2019. Since her income is received on a monthly basis, no further calculation is required to standardize it. Since the Department's Notice of Case Action first affected Petitioner's FAP benefit rate for December 2018, Petitioner's Retirement, Survivors and Disability Insurance (RSDI) benefit from December 2018 will be the income used in the calculation of her food budget which the Department properly considered.

After consideration of income, the Department considers all appropriate deductions and expenses. There was evidence presented that the Petitioner is a Senior, Disabled, or Disabled Veteran. BEM 550. Thus, she 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 (August 2017), p. 1; BEM 556 (April 2018), p. 3.

The Department budgeted \$0.00 for a child support and dependent care expense. Petitioner agrees that she does not have these expenses. The Department also budgeted the standard deduction of \$158.00 for a group size of one in accordance with Department policy. RFT 255 (October 2018), p. 1.

During its determination of eligibility, the Department did not afford Petitioner any medical expense deductions. Petitioner testified that she had submitted medical expenses to the Department, but was unable to identify a specific date for submission of these expenses. After review of Petitioner's Electronic Case File, the Department determined that Petitioner had submitted medical expenses on November 26th and 28th of 2018, as well as in January of 2019. Since all of these submissions were received after the Department's November 7, 2018, Notice of Case Action and after Petitioner's request for hearing, these medical expenses are not being reviewed. Petitioner's request for hearing was submitted on November 13th or 14th, 2018; therefore, this decision can only address the actions of the Department made within the 90 days prior to her hearing request. BAM 600 (October 2018), p. 6. If Petitioner had submitted medical expenses to the Department, the following types of expenses may be allowed pursuant to policy if the expense is timely submitted:

- Medical and dental care including psychotherapy and rehabilitation services provided by a licensed practitioner authorized by State law or other qualified health professional.
- Hospitalization or nursing care. Include these expenses for a person who was a group member immediately prior to entering a hospital or nursing home.
- Prescription drugs and the postage for mail-ordered prescriptions.
- Costs of medical supplies, sickroom equipment (including rental) or other prescribed medical equipment (excluding the cost for special diets).
- Over-the-counter medication (including insulin) and other health-related supplies (bandages, sterile gauze, incontinence pads, etc.) when recommended by a licensed health professional.
- Premiums for health and hospitalization policies (excluding the cost of income maintenance type health policies and

accident policies, also known as assurances). If the policy covers more than one person, allow a prorated amount for the SDV person(s).

- Medicare premiums.
- Dentures, hearing aids and prosthetics including the cost of securing and maintaining a seeing eye or hearing dog or other assistance animal. (Animal food and veterinary expenses are included.)
- Eyeglasses when prescribed by an ophthalmologist (physician-eye specialist) or optometrist.
- Actual costs of transportation and lodging necessary to secure medical treatment or services. If actual costs **cannot** be determined for transportation, allow the cents-per-mile amount at the standard mileage rate for a privately owned vehicle in lieu of an available state vehicle. To find the cents-per-mile amount go to the Michigan Department of Management and Budget at www.michigan.gov/dtmb, select Services & Facilities from the left navigation menu, then select Travel. On the travel page, choose Travel Rates and High Cost Cities using the rate for the current year.
- The cost of employing an attendant, homemaker, home health aide, housekeeper, home help provider, or child care provider due to age, infirmity or illness. This cost must include an amount equal to the maximum FAP benefits for one person if the FAP group provides the majority of the attendant's meals. If this attendant care cost could qualify as both a medical expense and a dependent care expense, it must be treated as a medical expense.
- A Medicaid deductible is allowed if the following are true.
 - The medical expenses used to meet the Medicaid deductible are allowable FAP expenses.
 - The medical expenses are not overdue. See below.

Since Petitioner had not submitted proof of any of the above medical expenses prior to the Department's decision on November 7, 2018, the Department properly budgeted \$0.00.

Once the Adjusted Gross Income (AGI) is calculated, the Department must then consider the Excess Shelter deduction. The Department budgeted and Petitioner agrees that she has a rental expense of \$[REDACTED] per month. In addition to the rental expense, the Department afforded Petitioner the Heat and Utility (H/U) standard of \$[REDACTED] as well as the Non-Heat Electric Standard of \$[REDACTED] RFT 255, p. 1. FAP groups that qualify for the H/U standard do not receive any other individual utility standards. BEM 554, p. 15. The H/U standard covers all heat and utility costs including cooling, except actual utility expenses such as installation fees. *Id.* A FAP group which

has a heating expense or contributes to the heating expense separate from rent payments, must use the H/U standard. *Id.* In addition, effective August 1, 2017, FAP groups that receive a \$ [REDACTED] LIHEAP payment by having a shelter expense greater than zero, are not homeless, and do not meet any other eligibility factors or receive the H/U standard, will receive the H/U standard because of the \$ [REDACTED] LIHEAP payment. The Non-Heat Electric Standard is provided to a group which has no heating/cooling expense but has a responsibility to pay for non-heat electricity separate from the rent. BEM 554, p. 21. In addition, if the FAP group does not have a heating/cooling expense, but has other expenses for water, sewer, telephone, cooking fuel, or trash, the FAP group may be eligible for a standard deduction for these items. BEM 554, pp. 21-24 Since Petitioner received the H/U standard deduction, the Department's failure to consider the telephone or water standard deduction is in accordance with Department policy.

According to the Shelter Verification form submitted as an exhibit, Petitioner's heating/cooling, water/sewer, and trash removal expenses are included in the cost of her rent. Despite this verification, the Department provided Petitioner the H/U Standard. It may be possible that Petitioner is a recipient of the \$ [REDACTED] LIHEAP payment which makes her eligible for the H/U Standard deduction. However, the Department also provided Petitioner with the Non-Heat Electric Standard; and she cannot be eligible for both the H/U Standard as well as the Non-Heat Electric Standard at the same time. BEM 554, pp. 15, 21. The evidence presented is not clear which standard deduction is applicable to Petitioner. Therefore, the Department erred in considering Petitioner's Excess Shelter Deduction resulting in an error in determining her FAP benefit rate.

If the Department had properly considered the standard deductions, the standard deductions would be added to her rent. BEM 556 (April 2018), p. 4. From there, 50% of Petitioner's Adjusted Gross Income (AGI) is subtracted to achieve Petitioner's Excess Shelter Deduction. *Id.* The Excess Shelter Deduction Maximum is \$552.00. RFT 255, p. 1; BEM 554, p. 1. Next, the Excess Shelter Deduction is subtracted from Petitioner's AGI to achieve her Net Income. BEM 556, pp. 4-7. Petitioner's net income would then be compared against the FAP Issuance Table to determine Petitioner's benefit rate. RFT 260 (October 2018).

After reviewing all evidence presented, the Department erred in calculating Petitioner's FAP benefit rate for December 2018, ongoing.

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 in determining Petitioner's FAP benefit rate.

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 FAP eligibility as of December 2018; and,
2. If Petitioner is otherwise eligible, issue supplements to Petitioner for benefits not 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 Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS 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. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

Amber Gibson
MDHHS-Ingham-Hearings

Petitioner

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