



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

Date Mailed: January 25, 2019
MAHS Docket No.: 18-013167
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 23, 2019, from Detroit, Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Sandra Kahill, Family Independence Specialist.

ISSUE

Did the Department properly determine 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. Petitioner was an ongoing recipient of FAP benefits.
2. In November and December 2018, Petitioner completed the Redetermination process.
3. Petitioner receives Retirement, Survivors and Disability Insurance (RSDI) benefits in the amount of \$ [REDACTED] effective January 2019.
4. Petitioner also receives \$ [REDACTED] in Supplemental Security Income (SSI) benefits effective January 2019.
5. Petitioner's son receives an SSI benefit of \$ [REDACTED] per month effective January 2019.

6. Petitioner receives child support payments for both of her children which are variable.
7. On December 3, 2018, the Department issued a Notice of Case Action to Petitioner informing her that her FAP case would close effective January 1, 2019, because her net income exceeded the limit after consideration of \$ [REDACTED] in unearned income, a housing expense of \$ [REDACTED] per month, the non-heat electric standard, and also the telephone standard.
8. On December 10, 2018, the Department received Petitioner's request for hearing disputing the closure of her FAP case.

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 Department's decision to close her FAP benefits as of January 1, 2019, due to having net income over the net income limit. At the hearing, the Department testified that it believed that there was an error in calculating her budget, but could not identify the error, and was uncertain whether the error would ultimately make her eligible for FAP benefits.

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 that Petitioner began receiving an RSDI benefit of \$ [REDACTED] per month and an SSI benefit of \$ [REDACTED] per month effective January 2019. In addition,

Petitioner's son began receiving an SSI benefits of \$ [REDACTED] per month effective January 2019. Since these sources of income are received on a monthly basis, no further calculation is required to standardize it.

Petitioner also receives child support income for each of her two children. According to records shared between the Office of Child Support (OCS) and the Department, Petitioner received \$ [REDACTED] for September 2018, \$ [REDACTED] for October 2018, and \$ [REDACTED] for November 2018 for one of her children. Petitioner disputes these amounts and indicated that the father of her children is in arrears, that he was ordered to pay \$ [REDACTED] per month, and that the amount she actually receives is less than the amount listed on the Department's evidence because the OCS is subtracting a fee or paying for Department services with a portion of the child support payment. Petitioner did not provide any documentation or specific evidence of the exact amount she receives each month, but the records provided by the Department agree with Petitioner's statements that the father was ordered to pay \$ [REDACTED] per month. For Petitioner's second child she received \$ [REDACTED] for September 2018, \$ [REDACTED] for October 2018, and \$ [REDACTED] for November 2018. Again, Petitioner disputes the amounts and noted that the amount she receives varies but did not provide any documentation or the amount of specific payments.

Child support is money paid by an absent parent for the living expenses of children. BEM 503 (October 2018), p. 6. Court-ordered child support may be either certified or direct and a certified support payment is retained by the state due to the child's Family Independence Program (FIP) activity. *Id.* Direct support is paid to the client. *Id.* In this case, the amounts listed above were considered direct support payments. In addition, all child support, whether it is considered to be a regular payment or arrearage payment, is considered countable income for purposes of FAP. BEM 503, pp. 8-9. When budgeting child support income, the Department is required to use the average of child support payments received in the past three calendar months, unless a change is expected. BEM 505, p. 4. If the payments vary, the Department should clarify if the pattern is expected to continue or if there are known changes. BEM 505, p. 4. If the pattern is expected to continue, the average of the three months is used. BEM 505, p. 5. If there are known changes that will affect the amount of the payments for the future, the past three months should not be used. *Id.* Therefore, Petitioner's average child support income per month for her first child is \$ [REDACTED] and for her second child is \$ [REDACTED].

After consideration of all Social Security Administration (SSA) benefits and the child support income, the total household income is \$ [REDACTED] (rounded down to the nearest dollar). Based upon the Department's budget and Notice of Case Action, the Department undercalculated Petitioner's income by \$ [REDACTED].

After consideration of income, the Department considers all appropriate deductions and expenses. There was evidence presented that Petitioner and her son are considered disabled. 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 (August 2017), p. 1; BEM 556 (April 2018), p. 3.

The Department budgeted \$0.00 for a child support and dependent care expenses. Petitioner agrees that she does not have these expenses. The Department also budgeted the standard deduction of \$158.00 for a group size of three in accordance with Department policy. RFT 255 (October 2018), p. 1. Finally, the Department budgeted \$0.00 for medical expenses and Petitioner admitted that she has not submitted any proofs to the Department. Potentially eligible medical expenses deductions for the senior, disabled, or disabled veteran household members include

- 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.

BEM 554, pp. 10-11. Since Petitioner has not submitted any proofs, she is not eligible for any medical expense deduction.

Once the Adjusted Gross Income (AGI) is calculated, the Department must then consider the Excess Shelter deduction. BEM 556 (April 2018), p. 4. The Department budgeted a rental expense of \$██████ per month. In addition to rent, Petitioner is responsible for electricity, heating, and cooling. She is also a recipient of the LIHEAP payment. The Heat/Utility (H/U) Standard covers all heat and utility costs including cooling, except actual utility expenses, such as installation fees. BEM 554, p. 15. FAP groups that receive the Home Heating Credit (HHC) or the Low-Income Home Energy Assistance Payment (LIHEAP) greater than \$20.00 are eligible for the H/U Standard. *Id.* FAP groups that qualify for the H/U standard do not receive any other individual utility standards. *Id.* The Department failed to provide Petitioner with the H/U standard

despite being responsible for the heating, cooling, and electrical costs as well as being a LIHEAP recipient. This was an error on the part of the Department.

If the Department had properly considered Petitioner's H/U standard, the rent and the standard deduction would be added together and reduced by 50% of Petitioner's Adjusted Gross Income (AGI). BEM 556 (April 2018), p. 4. This new amount would equal Petitioner's Excess Shelter Deduction which would then be deducted from Petitioner's total AGI to achieve her Net Income. BEM 556, p. 5.

Since the Department failed to properly consider Petitioner's total household income and also failed to properly consider the H/U standard, FAP eligibility was not correctly determined. It should be noted that even after the corrections are made, Petitioner may not be eligible for FAP benefits due to income over the net income limit of \$1,732.00 for a group size of three. RFT 250 (October 2018), p. 1; BEM 550 (January 2017), p. 1.

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 when it determined Petitioner's FAP eligibility.

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 eligibility for FAP benefits effective January 1, 2019;
2. If otherwise eligible, issue FAP supplements for benefits not previously received in accordance with Department policy; 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

Lauren Casper
MDHHS-Macomb-20-Hearings

Petitioner

[REDACTED]
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