



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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

Date Mailed: January 24, 2019
MAHS Docket No.: 18-013302
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 September 8, 2018, the Department issued a Notice of Case Action to Petitioner informing him that his FAP benefits would increase to \$ [REDACTED] per month effective October 1, 2018, based upon unearned income of \$ [REDACTED] per month, as well as housing costs totaling \$ [REDACTED] and consideration of the water/sewer and telephone standards.
3. On November 7, 2018, Petitioner visited the local office to advise them that his rent is not \$ [REDACTED] per month but instead \$ [REDACTED] per month.

4. The same day, the Department verified Petitioner's rental expense with his landlord.
5. Later the same day, the Department issued a Notice of Case Action to Petitioner informing him that his FAP benefit would decrease to \$ [REDACTED] per month effective December 1, 2018, based upon \$ [REDACTED] in unearned income, \$ [REDACTED] per month for his housing expense, and \$ [REDACTED] for the heat and utility standard (H/U), but without consideration of the water/sewer and telephone standards.
6. On December 5, 2018, Petitioner requested a hearing to dispute the calculation of his FAP benefit rate.

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 his FAP benefit rate. His hearing request did not list the date for which he is seeking review, but the Department took action on his FAP case twice within the 90 days prior to his December 5, 2018, hearing request. The first action increased his benefit rate to \$ [REDACTED]. The second action decreased his benefit rate to \$ [REDACTED]. Since it is unlikely that Petitioner intended to dispute an increased benefit rate, the actions taken by the Department with the first Notice of Case Action will not be addressed by this decision. This decision will only address whether the Department properly considered Petitioner's FAP benefit rate with the second Notice of Case Action dated November 7, 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 he receives a Social Security benefit of \$[REDACTED] per month. Since his income is received on a monthly basis, no further calculation is required to standardize it.

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, he 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 he does not have these expenses. The Department also budgeted the standard deduction of \$[REDACTED] for a group size of one in accordance with Department policy. RFT 255 (October 2018), p. 1.

During its initial determination of eligibility, the Department did not afford Petitioner any medical expense deductions. Petitioner agrees that he has not submitted any proof of medical expenses to the Department and noted that his only medical expense is related to transportation for medical appointments. A medical expense deduction is provided based upon verified allowable medical expenses. BEM 554 (August 2017), p. 8. The expenses can be a one-time expense or continuing expenses. BEM 554, pp. 9-10. Allowable medical expenses 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. See below.

Since Petitioner has not submitted proof of any of the above medical expenses, the Department properly budgeted \$0.00. It should be noted that medical transportation expenses are allowable expenses so long as someone in the FAP group is responsible to pay for the expense. BEM 554, p. 2. If the entire expense is paid directly by an agency or someone outside the group, then it is not an allowable expense in the FAP budget. *Id.* If an expense is partially reimbursed or paid by an agency or someone

outside the FAP group, the amount that the client is responsible to pay is allowed as an expense in the FAP budget. *Id.*

Once the Adjusted Gross Income (AGI) is calculated, the Department must then consider the Excess Shelter deduction. The Department budgeted and Petitioner agrees that he has a rental expense of \$ [REDACTED] per month. In addition to the rental expense, the Department properly afforded Petitioner the Heat and Utility (H/U) standard of \$ [REDACTED] BEM 554, pp. 14-15; 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. Therefore, the Department's failure to consider the telephone or water standard deductions is in accordance with Department policy. Once the rental expense and H/U standard are added together (\$ [REDACTED] 50% of Petitioner's AGI (\$ [REDACTED] is subtracted to achieve Petitioner's Excess Shelter Deduction (\$ [REDACTED]

Next, the Excess Shelter Deduction is subtracted from Petitioner's AGI to achieve his Net Income. Petitioner's net income was \$ [REDACTED]. Finally, the net income amount is compared against the FAP Issuance Table to determine Petitioner's benefit rate of \$ [REDACTED] effective December 2018, ongoing. RFT 260 (October 2018), p. 6.

After reviewing all evidence presented, the Department properly determined 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 acted in accordance with Department policy when it calculated Petitioner's FAP benefit rate.

DECISION AND ORDER

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



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

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

BSC4
M Holden
D Sweeney
A M T Marler
MAHS