



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
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[REDACTED] MI [REDACTED]

Date Mailed: February 1, 2019
MAHS Docket No.: 18-013590
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 28, 2019, from Detroit, Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Christine Brown, Hearings Facilitator.

ISSUE

Did the Department properly determine 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 was an ongoing Michigan Combined Application Project (MiCAP) recipient with his program enrollment ending December 31, 2018.
2. On [REDACTED], 2018, due to the pending MICAP closure, Petitioner applied for FAP benefits listing his responsibility to pay heat, electric, water, and sewer.
3. Petitioner receives \$ [REDACTED] in Retirement, Survivors and Disability Insurance (RSDI) benefits each month.
4. On December 4, 2018, the Department received copies of Petitioner's DTE Energy bill.

5. On December 11, 2018, the Department issued a Notice of Case Action to Petitioner informing him that he was eligible for FAP benefits effective January 1, 2019, in the amount of \$ [REDACTED] per month.
6. On December 18, 2018, the Department received proof of Petitioner's home owner's insurance policy and premium as well as his request for hearing disputing the Department's determination of FAP benefits.
7. On the same day, the Department issued a corrected Notice of Case Action to Petitioner informing him that he was eligible for \$ [REDACTED] in FAP benefits per month effective January 1, 2019.
8. On December 19, 2018, the Department received Petitioner's proof of his propane heating expense.

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 Department's first calculation of benefits from the December 11, 2018, Notice of Case Action granting Petitioner \$ [REDACTED] in FAP benefits per month. After receiving Petitioner's hearing request and additional verifications, the Department determined that errors had been made in the previous calculation and updated Petitioner's FAP case resulting in an increased benefit rate of \$ [REDACTED] with the same effectiveness date.

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 receives an RSDI benefit of \$[REDACTED] per month. Petitioner disagreed with the Department's assertions and indicated that he did not actually receive \$[REDACTED] per month, but instead some lesser amount which he could not identify. Petitioner explained that his RSDI benefit was reduced due to repayment of an overage as determined by the Social Security Administration (SSA) but did not know the amount over the overage or deduction. In all cases, the Department is required to consider the gross RSDI benefit amount as unearned income. BEM 503 (January 2019), p. 28. Therefore, any reduction in Petitioner's FAP benefit caused by an overage cannot be considered in the calculation of his FAP benefit rate. Petitioner's full gross RSDI benefit must be considered. Since the RSDI income is received on a monthly basis, no further calculation is required to standardize it. Both the first and second calculations of Petitioner's FAP benefit rate properly considered his RSDI income.

After consideration of income, the Department considers all appropriate deductions and expenses. Petitioner is [REDACTED] years old; therefore, he qualifies as a Senior, Disabled, or Disabled Veteran and is exempt from the gross income limit, is exempt from the shelter deduction maximum, and 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.

BPG Glossary (July 2018), p. 65; BEM 550 (January 2017), p. 1; BEM 554 (August 2017), p. 1; BEM 556 (April 2018), pp. 3, 5.

The Department budgeted \$0.00 for a child support and dependent care expense. Petitioner agrees that these expense deductions are not applicable to him. 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; BEM 556, p. 3.

During its determination of eligibility, the Department did not afford Petitioner any medical expense deductions. Petitioner agrees that he has not submitted proof of any medical expenses. Department policy requires that clients attempting to claim a medical expense deduction must submit verification of the expense. BEM 554, pp. 8, 12. Therefore, since Petitioner submitted no proof of any medical expenses, the Department properly budgeted \$0.00 for his medical expense deduction. BEM 554, pp. 8-9.

After consideration of the dependent care, child support, medical expense, and standard deductions, Petitioner's adjusted gross income (AGI) is calculated. Since

Petitioner had no dependent care, child support, or medical expenses, but received the standard deduction, Petitioner has an AGI of \$ [REDACTED]

Once the AGI is calculated, the Department must then consider the excess shelter deduction. Shelter expenses are considered for FAP groups who have or contribute to a shelter expense. BEM 554, p. 13. All shelter expenses are allowed when billed but do not necessarily have to be paid to be allowed. *Id.* The Department considers housing expenses including rent, first and second mortgages, home equity loans, condo or maintenance fees, lot rent, or other payments leading to ownership of the shelter. *Id.* In addition, property taxes, state and local assessments, and shelter related insurance premiums can be considered as housing expenses. BEM 554, p. 14. However, for insurance purposes, only the portion of the premium attributable to the structure may be considered and not any portion related to the contents of the home except when the amount for the structure cannot be determined. *Id.* The Department also provides deductions for utility type services on a standard basis for all clients. The heat and utility (H/U) standard covers all heat and utility costs including cooling, except actual utility expenses such as installation fees. *Id.* FAP groups that qualify for the H/U standard do not receive any other individual utility standards. BEM 554, p. 15. A FAP group which has a heating expense or contributes to the heating expense separate from rental payments must use the H/U standard. *Id.* The non-heat electric standard is provided to groups which have no heating/cooling expense but have 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. In each of these standards, the actual amount of the expense is not considered in the FAP budget, but instead a standardized amount found in RFT 255. Once each of these items is determined, the housing expenses and applicable standard deductions are added together and then reduced by half of the AGI. This calculation reflects the excess shelter deduction.

In the Department's first budget calculation, the Department did not provide Petitioner a housing expense deduction, but provided him the non-heat electric, water and/or sewer, as well as the telephone standard deductions. In the second recalculated budget, the Department provided Petitioner with a housing expense of \$ [REDACTED] as well as the H/U standard deduction. The housing expense was calculated based upon Petitioner's homeowner's insurance annual premium of \$ [REDACTED]. Although the insurance premium provides coverage for losses or liabilities greater than the loss of the structure, Petitioner's insurance documents do not itemize the amount of the premium attributable to each area of coverage. Instead, the documents only list the limits of liability or loss coverage. Therefore, the Department properly considered Petitioner's insurance premium as a housing expense. While Petitioner listed his responsibility to pay heat and electric expenses on his application which would make him eligible for the H/U standard, the Department did not consider this deduction in its first calculation. No evidence was presented to explain why the Department failed to consider this deduction in its first calculation. Since Petitioner listed the expenses on his application, the

Department should have sought verification of the expense before issuing its decision. BEM 554, p. 16; BAM 130 (April 2017). No evidence was presented that the Department ever sought verification of any of Petitioner's expenses. Despite this error, the Department corrected the error in its second calculation by providing Petitioner with the H/U standard. Since Petitioner received the H/U standard of \$ [REDACTED] in the second calculation, he was not eligible for any other standard deductions pursuant to policy. BEM 554, p. 15; RFT 255 (October 2018), p. 1. As a result of the Department's correction, Petitioner's housing expense and H/U standard were properly considered in the second calculation and he was afforded a greater excess shelter deduction than in the original calculation.

As discussed above, the excess shelter deduction is then subtracted from Petitioner's AGI to achieve his net income totaling \$ [REDACTED] BEM 556, p. 5. Petitioner's net income is then compared against the FAP Issuance Tables found in RFT 260 to determine his FAP benefit rate. Since Petitioner has a net income of \$ [REDACTED] after accurate consideration of his income and expenses, he is eligible to receive \$ [REDACTED] per month in FAP benefits. While the Department's first calculation of FAP benefits was incorrect, the Department corrected the error with the Notice of Case Action dated December 19, 2018.

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 with the Notice of Case Action dated December 11, 2018, but corrected its errors and acted in accordance with Department policy when it determined Petitioner's FAP benefit rate to be \$ [REDACTED] effective January 1, 2019, with the Notice of Case Action dated December 19, 2018.

DECISION AND ORDER

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



AMTM/

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

Linda Gooden
MDHHS-Oakland-3-Hearings

Petitioner

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