



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: April 19, 2019
MAHS Docket No.: 19-002689
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: John Markey

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 April 18, 2019, from Detroit, Michigan. Petitioner appeared and represented himself. The Department of Health and Human Services (Department) was represented by Patty Marx, Family Independence Manager. During the hearing, a 34-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-34.

ISSUE

Did the Department properly remove Petitioner's previously verified housing expense from the budget when determining Petitioner's Food Assistance Program (FAP) benefits for March 1, 2019, ongoing?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. At all times relevant to the instant case, Petitioner was receiving approximately \$750 per month in Supplemental Security Income (SSI) from the Social Security Administration.
2. Petitioner is an ongoing recipient of monthly FAP benefits from the Department.
3. Prior to March 2019, Petitioner was approved to receive \$192 per month in FAP benefits. The Department determined that amount by taking into consideration

Petitioner's reported and verified income and expenses, including utility expenses and a \$750 housing expense for Petitioner's rent at a home owned by his daughter, [REDACTED], who lives in Colorado. Exhibit A, pp. 3-5.

4. Each month, the SSI payment from the Social Security Administration to Petitioner was direct-deposited into an account in Petitioner's name at [REDACTED]. Exhibit A, p. 6.
5. Each month, Petitioner wrote a check for \$750 from his account at [REDACTED]. The \$750 check would then be deposited into an account at [REDACTED] held jointly in the names of [REDACTED], and Petitioner. Exhibit A, pp. 6-9; 26-27.
6. Petitioner's FAP case was flagged for review. The matter was forwarded to the Department's Office of Inspector General for investigation. The Department concluded that the housing expense should be removed based on its conclusion that it was not a bona fide expense. Exhibit A, pp. 11-16.
7. On January 17, 2019, the Department issued to Petitioner a Notice of Case Action informing Petitioner that his monthly FAP benefits were being decreased to \$72, effective March 1, 2019, as a result of a change in Petitioner's housing expenses. Exhibit A, pp. 28-29.
8. On February 20, 2019, Petitioner submitted to the Department a request for hearing disputing the Department's decision to remove the housing expense from his FAP budget, which caused a substantial decrease in Petitioner's monthly FAP benefits, effective March 1, 2019.

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 objects to a substantial decrease in his monthly FAP benefits amount that was caused by the Department's removal of a housing expense from Petitioner's FAP budget. Prior to March 1, 2019, the Department factored into

Petitioner's FAP budget a \$750 housing expense. Effective March 1, 2019, that expense was removed, resulted in a decrease in monthly benefits from \$192 to \$72.

The Department factors certain expenses into the FAP budget to determine benefit levels. BEM 554 (August 2017), p. 1. Shelter expenses, including housing expenses such as rent, are considered if they meet certain criteria. BEM 554, p. 13. Amongst those criteria are the requirements that someone in the FAP group has the responsibility to pay for the service in money and that any required verifications are provided. BEM 554, p. 1. Verification means documentation or other evidence to establish the accuracy of the client's verbal or written statements. BAM 130 (April 2017), p. 1. Verifications are required under many different circumstances, including when an eligibility factor is unclear, inconsistent, incomplete, or contradictory. BAM 130, p. 1.

The Department had previously verified Petitioner's \$750 housing expense and was factoring it into Petitioner's FAP budget. However, the validity of Petitioner's housing expense was called into question by virtue of the fact that Petitioner's reported monthly expenses, including \$750 in rent and hundreds of dollars in utilities, exceeded his monthly income of about \$750. The Department investigated, and after the investigation, removed the \$750 housing expense from Petitioner's FAP budget, effective March 1, 2019.

The Department's conclusion was based on the facts that the account Petitioner's rent check is deposited into every month is an account at [REDACTED] held jointly in the names of Petitioner, Petitioner's daughter, and [REDACTED], and multiple purchases, all in Michigan, were made from that account throughout the month of December 2018. As Petitioner's daughter lives in Colorado, the Department concluded that Petitioner was actually just transferring \$750 from one of his accounts to another of his accounts to look like rent while getting the benefit of having the housing expense included on the FAP budget. Certainly, the Department has presented a set of facts that called into question whether the rent payment was a bona fide rent payment to his daughter as opposed to a mechanism to enhance his FAP benefits without actually incurring any housing expense.

During the investigation and subsequently, Petitioner has adamantly denied that his housing expenses are anything other than \$750. Petitioner consistently stated that he issues a rental check for \$750 every month that is then deposited into the [REDACTED]. While Petitioner's name is on the account, he does not use the money in the account on himself. The purchases made in December 2018 in Michigan were either made by Petitioner for items requested by his daughter or made directly by his daughter while she was in town. Based on the limited information presented regarding the purchases, Petitioner's explanation was reasonable and credible. Likewise, when asked about his expenses exceeding his income, Petitioner described how he has routinely fell behind on his bills. Petitioner's response demonstrated that while Petitioner may be responsible for more expenses than he has in income, it appears that he is not able to meet those responsibilities.

Based on a thorough review of the record, it is found that the Department erred in removing Petitioner's verified housing expense of \$750 from his FAP budget, effective March 1, 2019. While the Department certainly presented evidence to call into question the housing expense, Petitioner effectively rebutted that evidence by providing consistent and credible testimony regarding the housing and banking arrangement with his daughter that demonstrated the housing expense was legitimate. Thus, Petitioner should have continued to receive the benefit of the \$750 housing expense being factored into his FAP budget.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it removed Petitioner's housing expense from Petitioner's FAP budget, which resulted in a substantial decrease in Petitioner's monthly FAP benefit amount, effective March 1, 2019.

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. Reinstate Petitioner's reported and verified monthly housing expense of \$750 into Petitioner's FAP budget, effective March 1, 2019, ongoing;
2. Redetermine Petitioner's FAP benefits, effective March 1, 2019, ongoing;
3. If Petitioner is eligible for additional benefits, promptly issue to Petitioner a supplement; and
4. Notify Petitioner in writing of its decisions.

JM/cg



John Markey

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

Via Email:

MDHHS-Benzie-Hearings
M. Holden
D. Sweeney
BSC2- Hearing Decisions
MAHS

Petitioner – Via First-Class Mail:

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