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Date Mailed: May 13, 2019
MOAHR Docket No.: 19-003535
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 May 8, 2019, from Detroit, Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Ashlee Brown, Eligibility Specialist. Translation services were provided by [REDACTED], a friend of Petitioner’s.

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 with a group size of five.
2. On February 25th and 26th of 2019, the Department received paystubs from Petitioner for pay dates between January 3, 2019 and February 21, 2019.
3. On March 11, 2019, the Department received Petitioner’s completed Semi-Annual Contact Report on which he indicated that his “food stamp is not enough for me. My household income has got down for 1,000. We are not working Saturday, Sunday” [*sic*] but he also checked the boxes indicating that his household income had not changed by more than \$100.00 from the budgeted \$ [REDACTED]

4. On April 9, 2019, the Department processed Petitioner's reported paystubs and issued a Notice of Case Action to Petitioner indicating that he was approved for \$ [REDACTED] in FAP benefits effective May 1, 2019 through October 31, 2019 for a group size of five with household earned income of \$ [REDACTED] standard deduction of \$ [REDACTED] housing cost of \$ [REDACTED] and the heat and utility standard deduction of \$ [REDACTED]
5. On April 2, 2019, the Department received Petitioner's request for hearing disputing the Department's 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 Department's calculation of his FAP benefit rate. 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. Income that is received weekly is averaged and multiplied by 4.3. *Id.* Income received every two weeks is averaged and multiplied by 2.15. *Id.* Income that is received twice per month is added together. *Id.*

The Department testified that it had budgeted the paystubs submitted by Petitioner for pay dates January 3, 2019 through January 31, 2019. This period is not the most immediate past 30 days available to the Department prior to its processing of Petitioner's updated pay information and issuance of the Notice of Case Action. The Department should have considered the pay dates from January 24, 2019 through

February 21, 2019 as this was the most recently available 30-day period prior to the processing of his application. During this period, Petitioner received the following gross wages:

January 24, 2019	\$	████████
January 31, 2019	\$	████████
February 7, 2019	\$	████████
February 14, 2019	\$	████████
February 21, 2019	\$	████████

Averaging these wages and multiplying the average by 4.3 results in a standardized income of \$████████ (dropping the cents), about \$████████ less than the Department previously budgeted. The household has no other sources of income.

After consideration of income, the Department considers all appropriate deductions and expenses. No members of Petitioner's household are considered a Senior, Disabled, or Disabled Veteran. BEM 550. Therefore, 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.

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 \$198.00 for a group size of five in accordance with Department policy. RFT 255 (October 2018), p. 1. After consideration of each of these expenses, the Adjusted Gross Income (AGI) is calculated. In this case, the AGI is \$████████

Once the AGI is calculated, the Department must then consider the Excess Shelter deduction. The Department budgeted and Petitioner agrees that he has a housing cost of \$████████ per month. In addition to the rental expense, the Department afforded Petitioner the Heat and Utility (H/U) standard of \$████████ 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.* 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

properly received the H/U standard deduction, the Department's failure to consider any other standard deduction for telephone, water, sewer, trash, or other item is in accordance with Department policy.

After consideration of the housing cost and standard deductions, the items are added together to achieve the Shelter Cost. BEM 556 (April 2018), p. 4. From there, 50% of Petitioner's Adjusted Gross Income (AGI) or \$[REDACTED] is subtracted to achieve Petitioner's Excess Shelter Deduction or \$325.27. *Id.* Next, the Excess Shelter Deduction is subtracted from Petitioner's AGI to achieve his Net Income or \$[REDACTED]. BEM 556, pp. 4-7. The net income limit for a group size of five is \$2,452.00. RFT 250 (October 2018), p. 1; BEM 550 (January 2017), p. 1. All clients must have income below the net income limit. BEM 550, p. 1. Therefore, pursuant to the calculations made in this decision, Petitioner is not eligible for FAP benefits.

After a review of the Department's calculations, it is still unclear as to how the Department determined that Petitioner was eligible for FAP benefits because even with consideration of the wages used by the Department and amounts listed in the Notice of Case Action for deductions, Petitioner's Net Income is still above the net income limit for a group size of five. However, because the Department's error results in a benefit to Petitioner, no changes will be made.

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 a 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 Office of Administrative Hearings and Rules (MOAHR).

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

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

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

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

DHHS

Montrece White
MDHHS-Macomb-20-Hearings

Petitioner

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[REDACTED] MI [REDACTED]

BSC4
M Holden
D Sweeney