



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: August 15, 2019
MOAHR Docket No.: 19-006276
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

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 August 12, 2019, from Detroit, Michigan. Petitioner was present and represented himself. The Department of Health and Human Services (Department) was represented by Colleen Corey, Assistance Payments Supervisor and Lance Fletcher, Eligibility Specialist.

ISSUE

Did the Department properly determine Petitioner's Food Assistance Program (FAP) benefit amount?

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 FAP recipient.
2. Petitioner had unearned income in the form of Retirement, Survivors and Disability Insurance (RSDI) in the monthly amount of \$805.
3. Petitioner was receiving a FAP benefit amount of \$[REDACTED] per month.
4. On [REDACTED] 2019, Petitioner submitted a request for hearing disputing the Department's calculation of his FAP benefit amount.

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.

On [REDACTED], 2019, Petitioner requested a hearing regarding his FAP benefit amount. Petitioner alleged that the Department has improperly calculated his FAP benefit amount since October 2018. A request for a hearing must be submitted within 90 days from the date of the written notice of case action. BAM 600 (April 2017), p. 6. However, an exception applies to FAP Cases and a request for a hearing disputing the current level of benefits may be made any time within the benefit period. BAM 600, p. 7. "Current" is interpreted to refer to the client's eligibility as of the hearing request month. The Department presented Petitioner's correspondence history showing that there was not a Notice of Case Action issued related to his FAP benefit case in the 90 days previous to his request for hearing. Therefore, Petitioner may only dispute his current FAP benefit amount from June 1, 2019, ongoing. The Department submitted a budget to establish the calculation of Petitioner's FAP benefit amount (Exhibit A, pp. 25-27).

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. According to the budget provided, the Department included \$805 in unearned income. Petitioner did not dispute the Department's income calculation. As such, the Department properly determined Petitioner's household income.

The deductions to income on the net income budget were also reviewed. There was evidence presented that the Petitioner's group includes a senior/disabled/veteran (SDV). 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; BEM 556 (August 2017), p. 1; BEM 556 (April 2018), p. 3.

Petitioner's FAP benefit group size of one justifies a standard deduction of \$158. RFT 255 (October 2018), p. 1. There was no evidence presented that Petitioner had any out-of-pocket dependent care or medical expenses. Therefore, the budget properly excluded any deduction for dependent care or medical expenses.

The Department allows a deduction for the following child support expenses: (i) the amount of court-ordered child support and arrearages paid by the household members to non-household members in the benefit month; (ii) court-ordered third party payments on behalf of non-household member; and (iii) legally obligated child support paid to an individual or agency outside the household, for a child who is now a household member, provided the payments are not returned to the household. BEM 554, p. 6. The Department will not allow more than the legal obligation if the client is up to date on their child support payments. BEM 554, p. 6. However, if the client is behind and making arrearage payments, the Department will allow the total amount paid even if it exceeds the court-ordered amount. BEM 554, p. 6. Current and arrearage child support expenses must be paid to be allowed. BEM 554, p.6.

At the hearing, Petitioner testified that he makes monthly child support payments. At the hearing the Department testified that Petitioner was not provided a child support expense deduction because the Consolidated Inquiry did not show that Petitioner was making child support payments and he did not submit any verification of the expense. The Department was advised to submit the Consolidated Inquiry subsequent to the hearing.

Upon review of the Consolidated Inquiry, Petitioner makes monthly child support payments (Exhibit A, pp. 18-21). The Department included an explanation stating that the reason the expenses were not included were because they were arrearage payments (Exhibit A, p. 15). Policy specifically states that both current and arrearage child support expenses should be included in the FAP budget as a deduction, so long as they are being paid. Therefore, the Department did not act in accordance with policy when it failed to include the child support payments in Petitioner's FAP budget. As it follows, the Department did not act in accordance with policy when it determined Petitioner's FAP benefit amount.

DECISION AND ORDER

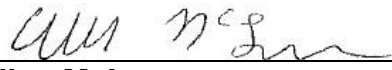
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with Department policy when it determined Petitioner's FAP benefit amount.

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 FAP eligibility as of June 1, 2019, ongoing;
2. If Petitioner is entitled to additional FAP benefits, issue supplements he is entitled to receive; and
3. Notify Petitioner of its decision in writing.

EM/cg



Ellen McLemore
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

Via Email:

MDHHS-Oakland-4-Hearings
M. Holden
D. Sweeney
BSC4- Hearing Decisions
MOAHR

Petitioner – Via First-Class Mail:

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