



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: August 29, 2019
MOAHR Docket No.: 19-007207
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 26, 2019, from ██████████ Michigan. Petitioner did not appear. ██████████, Petitioner's sister and guardian, testified and participated as Petitioner's authorized hearing representative (AHR). The Michigan Department of Health and Human Services (MDHHS) was represented by Karen Smalls, supervisor, and Brea Volsan, specialist.

ISSUE

The issue is whether MDHHS properly determined Petitioner's Food Assistance Program (FAP) eligibility.

FINDINGS OF FACT

The administrative law judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On May 1, 2019, Petitioner's AHR submitted to MDHHS an application reporting the following: Petitioner had no other household members, Petitioner had no ongoing medical expenses, Petitioner had a \$1,150/month housing cost, and Petitioner had utility obligations only for electricity and telephone. Petitioner's AHR also reported that Petitioner had no day care or child support expenses.
2. As of June 2019, Petitioner was an ongoing recipient of FAP benefits. Petitioner's FAP eligibility factored medical expenses exceeding \$8,000/month.

3. On June 26, 2019, MDHHS determined Petitioner to be eligible to receive \$15/month in FAP benefits beginning August 2019.
4. On July 2, 2019, Petitioner's AHR requested a hearing to dispute Petitioner's decreased FAP eligibility.
5. As of August 2019, Petitioner was eligible to receive \$1,550/month in Retirement, Survivors and Disability Insurance (RSDI). Petitioner's RSDI payment was reduced by \$135.50 due to the cost of a Medicare premium.
6. As of August 2019, Petitioner was disabled and the only member of her household.

CONCLUSIONS OF LAW

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. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner's AHR requested a hearing to dispute a decrease in Petitioner's FAP eligibility. Petitioner's AHR testified that she intended to dispute Petitioner's FAP eligibility for July 2019 though she acknowledged she had no current dispute for July 2019 because MDHHS issued \$192 in FAP benefits to her sister. Petitioner's AHR did dispute MDHHS' determination that her sister was eligible for \$15/month in FAP benefits beginning August 2019.

MDHHS testimony explained that the decrease in Petitioner's FAP eligibility was caused by removal of over \$8,000 in medical expenses from Petitioner's previous budgets. Petitioner's June 2019 FAP budget indeed included a medical expense deduction of \$8,381. Exhibit A, p. 9. Ongoing FAP eligibility is calculated independently of past FAP eligibility; thus, MDHHS' explanation of the benefit reduction does not definitively establish whether Petitioner's FAP eligibility was correctly calculated.

A Notice of Case Action dated June 26, 2019 (Exhibit A, pp. 14-18) and budget pages listed all factors used to calculate Petitioner's FAP eligibility for August 2019. During the hearing, all budget factors were discussed with Petitioner's AHR. The calculations to determine a client's FAP eligibility are set forth in BEM 556 and are incorporated in the following analysis.

As of August 2019, Petitioner did not reside with any other persons. Thus, Petitioner's group size is one.

MDHHS factored \$1,550 as Petitioner's unearned income. Petitioner's AHR did not dispute that her sister was eligible to receive \$1,550 in gross RSDI. Generally, MDHHS counts the gross RSDI benefit amount as unearned income.¹ BEM 503 (April 2019), p. 28. None of the exceptions to counting gross RSDI are applicable to the present case.

MDHHS uses certain expenses to determine net income for FAP eligibility and benefit levels. BEM 554 (October 2015), p. 1. For groups without a senior (over 60 years old), disabled or disabled veteran (SDV) member, MDHHS considers the following expenses: childcare, excess shelter (housing and utilities) up to a capped amount and court-ordered child support and arrearages paid to non-household members (see *Id.*). For groups containing SDV members, MDHHS also considers the medical expenses above \$35 for each SDV group member(s) and an uncapped excess shelter expense. Countable expenses are subtracted from a client's monthly countable income.

It was not disputed that Petitioner was disabled. Petitioner's AHR acknowledged that Petitioner had no day care or child support expenses. Petitioner's AHR acknowledged that Petitioner did not have ongoing medical expenses. Not having medical expenses would be consistent with Petitioner's receipt of Medicaid and Medicare which was also acknowledged by Petitioner's AHR. Though Petitioner did not have ongoing medical expenses, Petitioner's AHR's testimony repeatedly emphasized that Petitioner had substantial unpaid medical expenses from 2016 and earlier. To budget medical expenses, MDHHS is to project a client's medical expenses during the benefit period. BEM 554 (April 2019), p. 8. Petitioner's benefit period presumably began in May 2019 as that is when Petitioner submitted an application to MDHHS. Petitioner's medical expenses from 2016 would not be countable as they would not be expected to be incurred during Petitioner's benefit period.

The evidence established that Petitioner's RSDI was reduced for a Medicare premium. A Medicare premium is a countable expense. *Id.*, p. 10. Petitioner's budget for August 2010 listed \$0 for Petitioner's medical expenses. MDHHS should have been aware of Petitioner's Medicare expense from documentation verifying Petitioner's RSDI benefits.² Given the evidence, Petitioner is entitled to a recalculation of FAP benefits for August 2019 with her Medicare premium cost factored (minus a \$35 copayment). The remaining analysis will proceed factoring Petitioner's medical expenses to be \$0 but only for the purpose of simplifying remaining budget factors.

MDHHS correctly applied a standard deduction of \$158 (see RFT 255). The standard deduction is given to all FAP benefit groups, though the amount varies based on the benefit group size. The standard deduction is subtracted from the countable monthly

¹ Exceptions to counting gross RSDI include the following: certain former SSI recipient (e.g. disabled-adult children, 503 individuals, and early widowers), retroactive RSDI benefits, Medicare premium refunds, fee deductions made by qualified organizations acting as payee, and "returned benefits" (see BAM 500).

² MDHHS specialists are required to use a State Online Query (SOLQ) to verify a client's income from the Social Security Administration. BEM 503 (April 2019) p. 4. An SOLQ also includes data about a client's Medicare premium cost.

income to calculate the group's adjusted gross income. Subtracting the standard deduction from Petitioner's running countable income results in an adjusted gross income of \$1,392.

MDHHS budgeted Petitioner's housing costs to be \$1,150. The amount matched Petitioner's AHR reporting on the application dated May 1, 2019 and was not disputed.

MDHHS credited Petitioner with an obligation for telephone and electricity. The credits were consistent with Petitioner's AHR reporting on the application dated May 1, 2019, in which only electricity and telephone were reported utility obligations. Given the evidence, Petitioner is entitled to the standard credits for electricity (\$135) and telephone (\$31) obligations. RFT 255 (October 2018), p. 1. Adding Petitioner's housing and utility credits result in a total shelter obligation of \$1,316.

MDHHS only credits FAP benefit groups with an "excess shelter" expense. The excess shelter expense is calculated by subtracting half of Petitioner's adjusted gross income from Petitioner's total shelter obligation. MDHHS correctly calculated Petitioner's excess shelter deductions to be \$620.

The FAP benefit group's net income is determined by taking the group's adjusted gross income and subtracting the allowable excess shelter expense. Petitioner's FAP benefit group's net income is \$772. A chart listed in RFT 260 is used to determine the proper FAP benefit issuance. Based on Petitioner's group size and net income, Petitioner's proper FAP benefit issuance for August 2019 is \$15; the same issuance was calculated by MDHHS. Given the evidence, MDHHS properly determined Petitioner's FAP eligibility other than the failure to factor Petitioner's Medicare premium expense.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly determined Petitioner's FAP eligibility for August 2019. It is ordered that MDHHS initiate the following actions within 10 days of the date of mailing of this decision:

- (1) Redetermine Petitioner's FAP eligibility for August 2019 subject to the finding that MDHHS failed to factor Petitioner's Medicare premium expense; and
- (2) Issue a supplement for any benefits not properly issued.

The actions taken by MDHHS are **REVERSED**.

CG/jaf



Christian Gardocki

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 (via electronic mail)

Linda Gooden
MDHHS-Oakland-3-Hearings

BSC4
M Holden
D Sweeney

Petitioner (via first class mail)

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██████ MI ██████

Authorized Hearing Rep.
(via first class mail)

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