



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 16, 2019
MOAHR Docket No.: 19-007573
Agency No.: ██████████
Petitioner: ██████████

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 August 14, 2019, from Detroit, Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by ██████████, Assistance Payments Supervisor, and ██████████, Assistance Payments Worker.

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. On February 5, 2019, the Department issued a Notice of Case Action to Petitioner informing him that he was eligible effective April 1, 2019 for FAP benefits in the amount of ██████████ per month after consideration of ██████████ in Retirement Survivors Disability Insurance (RSDI) unearned income, ██████████ standard deduction, ██████████ in medical expenses, ██████████ in child support payments, ██████████ for a rental expense, ██████████ for the heat and utility standard (H/U) deduction, and finally, ██████████ for the non-heat electric standard deduction.
2. At some point, Petitioner moved from ██████████ to ██████████ and transferred his case between Department local offices.

3. On June 17, 2019, Petitioner's [REDACTED] case worker received an email from the Department Central Office asking him to review Petitioner's case and end the consideration of any old expenses.
4. On June 25, 2019, the review was complete and a Notice of Case Action was issued to Petitioner informing him that his FAP benefits would be reduced effective August 1, 2019 to [REDACTED] after consideration of [REDACTED] in RSDI unearned income, [REDACTED] standard deduction, the [REDACTED] H/U deduction, and removal of all other expenses including medical, child support, shelter, and non-heat electric deduction.
5. On July 8, 2019, the Department received Petitioner's request for hearing disputing the reduction in FAP benefits.

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 recalculation 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. Since Respondent receives a monthly RSDI benefit, no further calculation is required to standardize his income. Respondent receives [REDACTED] per month as his RSDI benefit.

After consideration of income, the Department considers all appropriate deductions and expenses. Petitioner is a senior, disabled, or disabled veteran (SDV) group member; therefore, the group is eligible for the following deductions to income:

- Dependent care expense.
- Medical expenses that exceed \$35.00
- Excess shelter deduction.
- Court ordered child support and arrearages paid to non-household members.
- Standard deduction based on group size.

BEM 550 (January 2017), pp. 1-1; BEM 554 (April 2019), p. 1; BEM 556 (July 2019), p. 3-6.

No evidence was presented that Petitioner has a dependent care expense.

All previously budgeted medical expenses were from 2013 or earlier, and Petitioner agrees that he no longer has these medical expenses. Groups that do not have a 24-month benefit period may choose to budget a one-time-only medical expense for one month or average it over the balance of the benefit period. BEM 554, p. 9. Groups that have a 24-month benefit period must be given the option to budget a one-time-only medical expense billed or due within the first 12 months of the benefit period to either budget it for one month, average it over the remainder of the first 12 months, or average it over the remainder of the 24-month benefit period. *Id.* Since Petitioner's most recent medical expense was from 2013, he is well beyond the appropriate budgeting period for any one time medical expenses since the review was completed in 2019. Petitioner was also uncertain as to whether he was continuing to pay a premium for Medicare Part D; however, the Department reviewed the State Online Query (SOLQ) which provides all pertinent information related to Petitioner's RSDI benefit and it shows that there is no deduction being made for Medicare Part D. Therefore, the removal of all of Petitioner's medical expenses from consideration in his FAP budget was in accordance with Department policy.

At the hearing, Petitioner was unclear as to whether he was still paying any child support arrears. Again the Department reviewed the SOLQ which showed that no deductions were being made for child support.

Finally, Petitioner was appropriately provided the \$158.00 standard deduction. RFT 255 (October 2018), p. 1.

After consideration of each of these deductions, Petitioner's Adjusted Gross Income (AGI) is calculated by subtracting each of these expenses from his gross income. Therefore, Petitioner's AGI is [REDACTED] which was properly calculated by the Department.

Once the AGI is calculated, the Department must then consider the Excess Shelter Deduction. When the Department initially recalculated Petitioner's budget, the Department removed Petitioner's rental expense from consideration because the rental expense being budgeted was attributable to his home in [REDACTED] and not his new home in [REDACTED]. At the pre-hearing conference, the Department discovered that Petitioner had a rental expense in [REDACTED] of [REDACTED] per month and took the necessary measures to incorporate the expense into Petitioner's FAP budget. However, the Department did not provide evidence of the implementation date of the change involving Petitioner's [REDACTED] expense. Policy provides that the Department is required to verify shelter expenses at application and when a change is reported. BEM 554, p. 14. Since Petitioner changed Department offices due to his move from [REDACTED] to [REDACTED], the Department was aware of the change. Once the Department becomes aware of a potential change, the Department must seek verification of the expense using a Verification Checklist (VCL). BAM 130 (April 2017), p. 3. The VCL must tell the client what verification is required, how to obtain it, and the due date. *Id.* No evidence was presented that the Department sought verification of Respondent's new housing expense once he moved to Grand Rapids, but before they removed his rental expense. Therefore, the Department has not met its burden of proof that it acted in accordance with Department policy in calculating Petitioner's FAP benefit rate as of August 1, 2019.

After the new rental expense is considered, the Department provides applicable standard deductions for utility related items. Petitioner's original FAP budget provided him with both a H/U deduction as well as a non-heat electric deduction. The H/U deduction covers all heat and utility costs including cooling, except actual utility expenses such as installation fees and the like. BEM 554, p. 15. FAP groups that qualify for the H/U deduction do not receive any other individual utility standard deductions. *Id.* Therefore, the Department's removal of Petitioner's non-heat electric deduction was in accordance with policy.

Once Petitioner's housing expense and utility standard deductions are considered, they are added together and reduced by 50% of Petitioner's AGI [REDACTED]. Considering Petitioner's rental expense of [REDACTED] plus his H/U deduction of [REDACTED] his excess shelter amount is [REDACTED].

Next, any Excess Shelter Deduction is subtracted from Petitioner's AGI to achieve his Net Income of [REDACTED]. Once his net income is calculated, it is compared against RFT 260 FAP Benefit Issuance Tables to determine his FAP benefit rate of [REDACTED] per month. RFT 260 (October 2018), p. 1. Since the Department improperly removed the rental expense without seeking verification of his new rental expense, the final determination of Petitioner's benefit rate effective August 1, 2019 is not in accordance with policy.

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 recalculated Petitioner's FAP benefit rate effective August 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. Redetermine Petitioner's FAP eligibility effective August 1, 2019 with consideration of Petitioner's housing costs;
2. If otherwise eligible, issue supplements to Petitioner for benefits not previously received; and,
3. Notify Petitioner in writing of its decision.

AM/tm



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

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]

CC:

[REDACTED]
[REDACTED]
[REDACTED]