



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], MI [REDACTED]

Date Mailed: November 14, 2019
MOAHR Docket No.: 19-010228
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

HEARING DECISION

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, 7 CFR 273.15, and Mich Admin Code, R 792.11002. After due notice, an in-person hearing was held on November 13, 2019, in Escanaba, Michigan. Petitioner, [REDACTED], appeared and represented himself. Respondent, Department of Health and Human Services (Department), had Mark Kwarciany, Family Independence Manager, appear as its representative. Neither party had any additional witnesses.

One exhibit was admitted into evidence during the hearing. A 25-page packet of documents provided by the Department was admitted collectively as the Department's Exhibit A.

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 is a FAP benefit recipient.
2. Petitioner has a household size of one.
3. Petitioner's household income consists of [REDACTED] per month from social security SSI plus [REDACTED] per quarter from state SSI.

4. Petitioner's social security payment of [REDACTED] is currently being offset by [REDACTED] per month by social security to recoup an overpayment. Petitioner is contesting the overpayment with social security.
5. Petitioner has housing expenses. Petitioner pays \$307.13 per month for a mortgage, Petitioner pays \$85.87 per month for property taxes, and Petitioner pays \$66.75 per month for home insurance. Petitioner is also responsible for paying utilities, including heating/cooling.
6. On September 7, 2019, the Department mailed a notice of case action to Petitioner to notify Petitioner that his FAP benefit was going to be reduced to \$160.00 per month effective October 1, 2019. The reason for the reduction was a change in standard deductions.
7. On September 16, 2019, Petitioner requested a hearing to dispute his FAP benefit amount.
8. After Petitioner requested a hearing, Petitioner provided the Department with verification of his property taxes and home insurance expenses. The Department had not previously budgeted these expenses because it did not have verification of them. The Department revised its budget to include the additional expenses. The Department's revised budget calculated that Petitioner was eligible for a FAP benefit of \$165.00 per month. The Department made Petitioner's FAP benefit \$165.00 per month effective October 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) 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 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 is disputing the amount of his FAP benefit. The Department determines a client's monthly FAP benefit amount by determining the client's group size and countable household income and then looking that information up in its applicable Food Issuance Table. BEM 212 (July 1, 2019), BEM 213 (January 1, 2019), BEM 550 (January 1, 2017), BEM 554 (April 1, 2019), BEM 556 (July 1, 2019), RFT 255 (October 1, 2018), and RFT 260 (October 1, 2018).

Petitioner presented sufficient evidence to establish that the Department did not properly determine his FAP benefit amount effective October 1, 2019. Petitioner's total

monthly income was \$ [REDACTED] which included his gross income from social security SSI and state SSI. Petitioner was eligible for a standard deduction of \$161.00 from his gross income. Petitioner's adjusted gross income after the standard deduction was \$624.00. Petitioner was eligible for a \$569.00 excess shelter deduction from his adjusted gross income, which results in a countable net income of [REDACTED] per month. With a net countable income of [REDACTED] per month, Petitioner was eligible for a maximum FAP benefit of \$177.00 per month.

The total gross income of [REDACTED] was determined by adding Petitioner's gross social security SSI of [REDACTED] to the monthly amount of Petitioner's state SSI, [REDACTED]. Petitioner argued that he only receives [REDACTED] from social security, so that is the amount that should be counted. Petitioner only receives [REDACTED] because social security withholds [REDACTED] for an overpayment. Thus, the gross amount of Petitioner's social security is [REDACTED]. The Department properly used the gross amount pursuant to policy, which requires the Department to use the gross amount. BEM 503 (October 1, 2019), p. 33. Petitioner also argued that he only receives his state SSI payment quarterly so it should not be budgeted for every month. The Department properly budgeted the monthly amount of Petitioner's state SSI payment for each month pursuant to policy, which requires the Department to budget the monthly amount of state SSI payments. *Id.* at 34.

The excess shelter deduction amount of \$569.00 was determined by considering Petitioner's housing costs of \$459.75 per month and the heat and utility standard of \$518.00. The total of Petitioner's housing costs and the heat and utility standard was \$977.75. One-half of Petitioner's adjusted gross income is deducted from the total to come up with an adjusted excess shelter amount of \$666.00. The adjusted excess shelter amount exceeds the maximum allowable excess shelter deduction of \$569.00, so Petitioner is eligible for the maximum excess shelter deduction of \$569.00.

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 its policies and the applicable law when it determined Petitioner's food assistance benefit amount.

IT IS ORDERED the Department's decision is **REVERSED**. The Department shall begin to implement this decision within 10 days.

JK/ml



Jeffrey Kemm
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

Joan King
305 Ludington St.
Escanaba, MI 49829

Delta County DHHS – Via Electronic Mail

BSC1 – Via Electronic Mail

M. Holden – Via Electronic Mail

D. Sweeney – Via Electronic Mail

Petitioner

[REDACTED] – Via First Class Mail
[REDACTED] MI [REDACTED]