



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]

Date Mailed: February 26, 2020
MOAHR Docket No.: 19-012569
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, an in-person hearing was held on February 24, 2020 from Detroit, Michigan. The Petitioner appeared for the hearing and was represented by her husband and Authorized Hearings Representative, [REDACTED]. The Department of Health and Human Services (Department) was represented by Karen Smalls, Assistance Payments Supervisor, and Gloria Moon, 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. Petitioner is an ongoing FAP recipient.
2. During a review of Petitioner's FAP case in July 2019, the Department determined that previously budgeted medical expenses were last verified in 2009 and 2013 depending on the expense.
3. On July 18, 2019, the Department issued a Verification Checklist (VCL) to Petitioner requesting verification of health insurance premiums and any other medical expense.

4. Follow-up conversations on the request for verifications occurred on July 25, 2019; October 24, 2019; and November 6, 2019.
5. On July 29, 2019, the Department received a handwritten list of expenses but no attached receipts or other verification of the expense.
6. On August 22, 2019, the Department issued a Notice of Case Action to Petitioner informing her of the reduction in her FAP benefit rate to \$15.00 per month effective October 1, 2019 because her medical expense deduction had been reduced.
7. On November 19, 2019, Petitioner's husband signed and submitted a request for hearing disputing the Department's calculation of their 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 and her husband dispute the calculation of their FAP benefit rate. To determine whether the Department properly calculated Petitioner's FAP benefit rate, an evaluation of the Department's budget calculations is necessary, starting with income. All countable gross 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. Unearned income includes but is not limited to Retirement, Survivors and Disability Insurance (RSDI), pension benefits, and veteran's benefits. BEM 503 (October 2019), pp. 28, 37-40. 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; 7 CFR 273.10(c)(1-3).

When the Department reevaluated Petitioner's FAP benefits in August 2019 and implemented changes effective October 1, 2019, the Department had no verifications to support the unearned income of Petitioner nor the medical expenses for the household. At the time of the hearing, the Department was only able to provide information regarding the RSDI benefit received by both Petitioner and her husband from October 2019. Petitioner and her husband received \$143.60 and \$326.00, respectively, in RSDI benefits. The Department cannot specify where the remaining \$1,489.40 comes from or how it was calculated. Since being able to prove that the calculation of income is essential to showing that the Department has properly calculated Petitioner's FAP benefit rate, the Department has not met its burden of proof in establishing that Petitioner was only eligible for \$15.00 per month effective October 1, 2019. However, because so many questions and concerns were raised during the hearing regarding actions or inactions by the Department in calculating Petitioner's FAP benefit rate, a review of those questions follows below.

First and foremost, Petitioner and her husband do not believe that the Department is properly considering the household's income received from England with consideration of the exchange rate. As mentioned above, policy and federal regulations require the Department to determine a standard monthly amount for each income source. *Id.* Therefore, even though Petitioner and her husband are correct in their assertions that income received from England varies from day to day based upon the exchange rate, the Department is still required, pursuant to Federal Regulations, to standardize the income and budget a monthly amount rather than make a daily, weekly, or regular monthly evaluation of their household income. Once the income is budgeted, it is budgeted for remainder of the benefit period unless the income source stops or is altered in a manner that was not reasonably anticipated. The same rules are applied for other individuals whose income varies week to week or month to month such as waitresses, people working variable schedules, or irregular overtime. BEM 505, p. 6.

After consideration of income, the Department considers all appropriate deductions and expenses. There was evidence presented that the Petitioner is a Senior, Disabled, or Disabled Veteran. BEM 550. Therefore, 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 for expenses greater than \$35.00.

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

This case started as an audit of Petitioner's case to determine compliance with policy and federal regulations. After the review, the Department determined that Petitioner did not have sufficient verifications of medical expenses in her case file to warrant

continuation of most of the medical expense deduction. In some situations, medical expenses were being budgeted from 2009. As a result, the Department sought verification of Petitioner's medical expenses via a VCL. When the Department requests verification of any item, the Department must tell the client what verification is required, how to obtain it, and the due date. BAM 130 (April 2017), p. 3. Typically, these objectives are achieved by issuing a DHS-3503 Verification Checklist (VCL) to the client. *Id.* The client should be provided ten calendar days to return the requested verification. BAM 130, p. 7; 7 CFR 273.2(f). Verifications are considered timely if received in the local office by the due date. Negative action notices are sent when the client refuses to provide verification of an item which determines eligibility or the time period given has lapsed without a reasonable effort by the client to comply with the request. *Id.* In FAP cases, clients may not receive an extension even upon request; however, the Department is required to assist in obtaining the verifications. *Id.* If a FAP client complies with the request after the due date, eligibility will be determined based upon the compliance date or an application will be reregistered if compliance occurs within 60 days of the Application date. *Id.* As discussed above, income is an item which determines eligibility for FAP benefits. BEM 500. If a client fails to provide expense verification and is still income eligible, verification of expenses will not close or deny a client's case, but it may reduce a benefit. Income eligibility exists when a client's gross and/or net income fall below the applicable gross and/or net income limits. BEM 550 (January 2017), p. 1; RFT 250. This is why Petitioner's FAP case did not close when the Department failed to receive acceptable verifications of their medical expenses. Verification of medical expenses can be completed by:

- Current bills or written statement from the provider, which show all amounts paid by, or to be paid by, insurance, Medicare or Medicaid.
- Insurance, Medicare or Medicaid statements which show charges incurred and the amount paid, or to be paid, by the insurer.
- DHS-54A, Medical Needs, completed by a licensed health care professional.
- State Online Query (SOLQ) (an interface with the Social Security Administration accessible by the Department to aid it in determining a client's Social Security Benefit and Medicare participation) for Medicare premiums.
- Written statements from licensed health care professionals.
- Collateral contact with the provider. (Most commonly used to determine cost of dog food for a service dog, over-the-counter medication and health-related supplies, and ongoing medical transportation).

BEM 554, pp. 11-12. Medical expenses are supposed to verified at application, redetermination, reported changes, or when circumstances are questionable. BEM 554, p. 12. Since at the time of the Notice of Case Action in August 2019, Petitioner had not provided any acceptable forms of verification of the medical expenses and the Department was only able to verify the Medicare Part B premium through the SOLQ, the Department properly reduced Petitioner's medical expense deduction to \$101.00 (135.50 - 35=100.50 round up to the nearest dollar).

The parties agree that Petitioner does not have a child support or dependent care expense. The Department also budgeted the standard deduction of \$161.00 for a group size of two in accordance with Department policy. RFT 255 (October 2019), p. 1.

After consideration of all these expenses, the Department calculates Petitioner's Adjusted Gross Income (AGI). BEM 556 (July 2019), p. 4. Once the Adjusted Gross Income is calculated, the Department must then consider the Excess Shelter Deduction. The Department budgeted and Petitioner did not dispute that she has a housing expense of \$679.43 per month. In addition to the housing expense, the Department provided Petitioner with the heat and utility standard deduction (H/U) of \$543.00. The H/U is provided to clients who are responsible for the cost of their heat and electric bills. BEM 554, p. 15. Individuals eligible for the H/U are not eligible for any other utility standards because it is considered to cover all heat and utility costs including cooling. *Id.* Once each utility standard is considered, the housing expense and utility standards are added together for a total housing expense. BEM 556, p. 5. Petitioner's total housing expense is then reduced by half of her AGI. *Id.* If the calculation results in a negative number, Petitioner does not have an excess shelter cost and is not eligible for an Excess Shelter Deduction. *Id.* If the calculation results in a positive number, Petitioner has excess shelter costs and receives a deduction.

If Petitioner is eligible for an Excess Shelter Deduction, the deduction would then be subtracted from the AGI to achieve the Net Income. BEM 556, pp. 5-6. At this point, Petitioner's Net Income would be considered against the FAP Net Income Limit for a group size of two, which was \$1,410.00 effective October 1, 2019. RFT 250 (October 2019), p. 1; BEM 550 (January 2017), p. 1. If the Net Income is below the Net Income Limit, she is eligible for FAP benefits and Petitioner's Net Income is compared against the Food Assistance Issuance Tables to determine the household monthly benefit rate. RFT 260.

Since the Department was unable to identify the amounts of each source of income used in Petitioner's FAP budget and Petitioner disputes the Department's consideration of income, the Department has not met its burden of proof in establishing that the FAP benefit rate was properly calculated.

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 reduced Petitioner's FAP benefit rate to \$15.00 per month effective October 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 eligibility for FAP benefits effective October 1, 2019;
2. If otherwise eligible, issue supplements to Petitioner for any benefits not previously received effective October 1, 2019; and,
3. Notify Petitioner in writing of its decision.



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

Linda Gooden
MDHHS-Oakland-6303-Hearings
BSC4
M Holden
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Authorized Hearing Rep.

[REDACTED]

Petitioner

[REDACTED]