



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: January 15, 2020
MOAHR Docket No.: 19-013146
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, a telephone hearing was held on January 14, 2020 from Detroit, Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) did not appear for the hearing despite an email notifying them of the change to a three-way telephone hearing and two calls reminding them of the three-way hearing on the day of prior to the hearing proceeding.

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. On [REDACTED] 2019, the Department received Petitioner's completed Mid-Certification Contact Notice listing no current changes but noting that there would be changes in her prescription costs soon.
3. On the same day, the Department received Petitioner's request for hearing disputing the reduction in her FAP benefit rate.
4. On December 12, 2019, the Department issued a Notice of Case Action to Petitioner informing her that her FAP benefit rate would increase to \$58.00 per month effective January 1, 2020 based upon a group size of one; \$1,716.00 in

unearned income; a Standard Deduction of \$161.00; \$191.00 in medical expenses; \$1,076.81 in housing costs; and the \$518.00 heat and utility standard deduction (H/U).

5. Between September 2019 and January 2020, Petitioner's FAP benefit rate ranged from \$63.00 at the low to \$72.00 at the high according to an Eligibility Summary which does not coincide with the Notice of Case Action.

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 reduction in her FAP benefit rate. The Department did not appear for the hearing; however, Petitioner's FAP budget was reviewed with her on the record, and she commented on all aspects of the budget. Since the Department did not appear at the hearing and since the Department failed to provide information related to Petitioner's FAP benefit rate calculation prior to her hearing request, the Department has not met its burden of proof in establishing that it properly determined Petitioner's eligibility. However, for Petitioner's sake and understanding, a complete review of the FAP budget process follows below.

To determine whether the Department properly calculated Petitioner's FAP benefit rate, the evaluation first starts with consideration of all countable gross earned and unearned income available to the client 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. At the hearing, Petitioner agreed that she had gross Retirement, Survivors and Disability

Insurance (RSDI) income totaling \$1,716.00 per month. She also indicated that she had no other sources of income.

After consideration of income, the Department considers all appropriate deductions and expenses. Petitioner is a senior, disabled, or disabled veteran (SDV) group member; therefore, Petitioner 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 (October 2019), p. 1; BEM 556 (July 2019), pp. 3-6.

Petitioner agrees with the Department's calculation for January 2020, ongoing, that she does not have a dependent care or child support expense. The Department budgeted a \$191.00 medical expense deduction. Since the Department was not present for hearing, it is unclear which medical expenses the Department is budgeting on a regular basis versus one-time expenses. However, Petitioner noted that she is responsible for her Medicare Part B Premium and has many additional medical expenses for prescriptions. The Department also budgeted a Standard Deduction of \$161.00 based upon for a group size of one. RFT 255 (October 2019), p. 1; BEM 556, p. 4. For October 1, 2018 through September 30, 2019, the Standard Deduction was \$158.00 per month for a group size of one to three individuals. RFT 255 (October 2018), p. 1. Effective October 1, 2019, the Standard Deduction was changed to \$161.00 for the same group size. The Department is required to annually review standard deductions and make adjustments to reflect changes in costs pursuant to federal regulations. 7 CFR 273.9(d)(6)(iii)(B). Effective October 1, 2019, the Department completed the review of standards as required by Federal Regulations; therefore, Petitioner's Standard Deduction was increased to \$161.00.

After consideration of each of these deductions, Petitioner's Adjusted Gross Income (AGI) is calculated by subtracting each of these expenses from her gross income. Since the Department did not appear for the hearing to explain how it arrived at the medical expense deduction, Petitioner's AGI cannot be calculated here.

Once the AGI is calculated, the Department must then consider the Excess Shelter Deduction. BEM 554, p. 1; 7 CFR 273.9(d)(6). The Excess Shelter Deduction is calculated by adding Petitioner's Housing Costs to any of the applicable standard utility deductions and reducing this expense by half of Petitioner's AGI. BEM 556, pp. 4-7; 7 CFR 273.9(d)(6)(ii).

The Dept budgeted \$1,097.82 as Petitioner's housing expense. Housing expenses include rent, mortgage, a second mortgage, home equity loan, required condo or maintenance fees, lot rent, and other payments including interest leading to the owner of the home. BEM 554, p. 13. Other payments that might be considered include property taxes, state and local assessments, and insurance on the structure but not for the contents of the structure unless they cannot be determined separately. BEM 554, p. 14. Petitioner testified that she had a \$868.00 mortgage, \$[REDACTED] in property taxes, and \$82.00 per month for insurance premiums for a total housing expense of \$1,100.00, slightly more than that budgeted by the Department. Since the Department did not appear for the hearing, it is unclear whether the amount budgeted is accurate based upon past verifications.

Next, Petitioner contests the Department's consideration of her heat and utility standard deduction (H/U) of \$518.00 per month. The H/U is a standard deduction provided to eligible clients that is meant to cover all heat and utility costs including cooling except actual utility expenses for things like repairs. BEM 554 (October 2019), p. 15. In 2018, the H/U was \$543.00 in accordance with policy. RFT 255 (October 2018), p. 1. When the policy was updated and implemented effective October 1, 2019, a new H/U of \$518.00 was applied to all eligible FAP recipient budgets. RFT 255 (October 2019), p. 1. The change in the H/U was required by Federal Regulations just as it had been required for the Standard Deduction discussed above. It is worth noting that policy provides that FAP groups receiving the H/U do not receive any other individual utility standard deductions. *Id.*

After determining utility standard deductions, Petitioner's total shelter expense is calculated by adding together the housing expense and any applicable utility standard deductions. Then, the total shelter expense is reduced by 50% of Petitioner's AGI to achieve her Excess Shelter Deduction. *Id.*

After Petitioner's Excess Shelter Deduction is calculated, it is then subtracted from her AGI to achieve her Net Income. *Id.* Petitioner's Net Income is then compared against the FAP Benefit Issuance Tables for a group size of one to determine her benefit rate. RFT 260 (October 2019), p. 1. Since many aspects of Petitioner's budget were not supported by evidence from the Department, Petitioner's actual FAP benefit rate cannot be calculated here. In addition, since Petitioner's FAP benefit rate varied between September 2019 and January 2020 and Petitioner's hearing request was received as of December 9, 2020, the Department has not met its burden of proof in establishing that the FAP benefit rates between September 2019 and January 2020 were accurately 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 calculated Petitioner's FAP benefit rate.

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 benefit rate as of September 2019, ongoing;
2. If otherwise eligible, issue supplements to Petitioner for benefits not previously received; and,
3. Notify Petitioner in writing of 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

Jackie Stempel
MDHHS-Muskegon-Hearings
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Petitioner

