



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: July 30, 2020
MOAHR Docket No.: 20-003781
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 July 27, 2020 from separate locations due to COVID-19. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Kelly Teed, Hearings Facilitator.

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 24, 2020, the Department received Petitioner's completed Redetermination on which he indicated a change in income to \$1,545.70 in net Retirement Survivors Disability Insurance (RSDI), an increase in property taxes, homeowner's insurance, but no change in any other expenses or income.
2. On March 2, 2020, the Department issued a Verification Checklist (VCL) to Petitioner requesting proof of his checking account, property taxes, and homeowner's insurance premium; all were timely received and verified.
3. Petitioner has a homeowner's insurance premium of \$668.00 per year.

4. Petitioner had a 2019 Summer Tax bill of \$1,577.24 and a 2020 Winter Tax bill of \$777.39.
5. Petitioner receives a gross RSDI benefit of \$1,662.00 per month.
6. Petitioner has a monthly Medicare Part B premium of \$144.60 per month.
7. Petitioner is responsible for his heat and electrical expenses in addition to water, sewer, and trash expenses.
8. On March 26, 2020, the Department issued a Notice of Case Action to Petitioner informing him that effective April 1, 2020, his FAP benefit rate would be \$16.00 for a group size of one based upon \$1,662.00 in unearned income, a \$161.00 Standard Deduction, \$110.00 for a medical expense deduction, \$743.83 for housing costs, and a \$518.00 heat and utility standard deduction (H/U).
9. On May 6, 2020, the Department received Petitioner's request for hearing disputing the calculation of his 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 disputes the reduction in his FAP benefit rate. To determine whether the Department properly calculated Petitioner's FAP benefit rate, the evaluation first starts with consideration of all countable earned and unearned income available to the client; 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 gross 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. Petitioner receives \$1,662.00

per month as gross unearned income for his RSDI benefits. This income is received on a monthly basis which does not require further standardization. No evidence was presented regarding any 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, he 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 (January 2020), p. 1; BEM 556 (January 2020), p. 3-6.

No evidence was presented that Petitioner has a dependent care expense or child support expense. Therefore, the Department properly budgeted these items as \$0.00. The Department also budgeted a Standard Deduction of \$161.00 in accordance with Department policy for a group size of one to three individuals. RFT 255 (January 2020), p. 1; BEM 556, p. 4. Finally, Petitioner testified that he had medical expenses greater than that budgeted by the Department. Policy and Federal Regulations provide that the Department is required to consider verified medical expenses which exceed \$35.00 for SDV group members. BEM 554, pp. 1, 8; 7 CFR 273.9(d)(3). Since Petitioner's verified medical expense for his Medicare Part B premium was \$144.60, the Department properly budgeted \$110.00 for Petitioner's Medical Expense Deduction.

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. Petitioner's AGI is \$1,391.00 per month.

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 deductions and reducing this expense by half of Petitioner's AGI. BEM 556, pp. 4-7; 7 CFR 273.9(d)(6)(ii). Petitioner has multiple housing expenses including a mortgage, second mortgage, property taxes, and homeowner's insurance. Each of these items may be considered in calculating Petitioner's housing expense and Excess Shelter Deduction if verified. BEM 554, p. 13-15. Petitioner's first mortgage is \$491.94 per month. He has annual property taxes of \$2,354.63 or \$196.22 per month. In addition, Petitioner is responsible for \$668.00 in homeowner's insurance annually or \$55.66 per month. Finally, Petitioner has a second mortgage expense, but although Petitioner testified he submitted proof of the second mortgage in 2019, the Department has no record of receipt of the second mortgage until May 2020. Since the Department did not

receive verification of the second mortgage until after its decision was issued, the second mortgage cannot be considered in this decision. Therefore, Petitioner's total verified monthly housing expense is \$743.82 per month which was correctly budgeted by the Department.

Petitioner is also responsible for the heat and utilities. The heat and utility standard deduction (H/U) covers all heat and utility costs including cooling except actual utility expenses. BEM 554, p. 15. The Department is required to annually review standards such as the H/U and make adjustments to reflect changes in costs. 7 CFR 273.9(d)(6)(iii)(B). Effective October 1, 2019, the Department completed the review of standards as required by Federal Regulations and implemented a new H/U of \$518.00. RFT 255 (January 2020), p. 1. FAP groups that receive the H/U do not receive any other individual utility standards such as water, sewer, or trash because the H/U is an all-encompassing deduction for utilities. *Id.* In consideration of Petitioner's mortgage, taxes, homeowner's insurance, and utilities, Petitioner's total housing cost is \$1,261.82 per month. The total housing cost is reduced by 50% of Petitioner's AGI (\$695.50) to achieve his Excess Shelter Deduction of \$566.32. *Id.*

After Petitioner's Excess Shelter Deduction is calculated, it is then subtracted from his AGI to achieve his Net Income which is \$824.68. *Id.* Petitioner's Net Income is then compared against the FAP Benefit Issuance Tables for a group size of one to determine his new benefit rate of \$16.00. RFT 260 (October 2019), p. 12.

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 acted in accordance with Department policy when it calculated Petitioner's FAP benefit rate.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.

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

Vivian Worden
44777 Gratiot
Clinton Township, MI 48036

Petitioner



cc: FAP: M. Holden; D. Sweeney
Macomb County AP Specialist (4)