



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: September 25, 2020
MOAHR Docket No.: 20-005080
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 September 17, 2020. [REDACTED] the Petitioner, appeared on his own behalf. The Department of Health and Human Services (Department), was represented April Nemec, Hearing Facilitator (HF).

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-42.

ISSUE

Did the Department properly determine Petitioner's eligibility for the Food Assistance Program (FAP)?

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 [REDACTED] 2020, Petitioner applied for FAP. (Exhibit A, pp. 10-15)
2. On June 24, 2020, a telephone interview was completed. (Exhibit A, p. 3; HF Testimony)
3. On June 24, 2020, a Verification Checklist was issued requesting proof of rent and non-heat electric expenses with a due date of July 6, 2020. (Exhibit A, pp. 16-17)
4. On June 30, 2020, the Department received the requested proof of rent. The Department asserted that did not receive the requested proof of non-heat electric expense. (Exhibit A, pp. 3, 18, and 24; HF Testimony)

5. On July 1, 2020, a Notice of Case Action was issued to Petitioner stating FAP was approved for June 17, 2020 through June 30, 2020 for a partial month allotment of \$27.00, and for July 1, 2020 through May 31, 2022 with a monthly allotment of \$59.00. (Exhibit A, pp. 25-29)
6. On July 27, 2020, the Department received a Consumers Energy bill indicating Petitioner was responsible for non-heat electric. (Exhibit A, p. 30)
7. On July 29, 2020, a Notice of Case Action was issued to Petitioner stating FAP was approved for August 1, 2020 through May 31, 2022, with a monthly allotment of \$97.00. (Exhibit A, pp. 31-35)
8. On August 3, 2020, Petitioner requested a hearing contesting the Department's actions. (Exhibit A, pp. 7-9)

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.

BAM 115 addresses application processing, including the FAP begin date at application:

Begin Date At Application

The FAP begin date depends on the group's eligibility and whether the 30-day standard of promptness (SOP) has been met; see Sub-sequent Processing in this item. Use the following criteria:

- When the 30-day SOP is met, or it is not met but the group is not at fault for the delay, the begin date is either of the following:
 - The application date if the group is eligible for the application month (even if proration causes zero benefits).
 - The first day of the month after the application month if that is when the group becomes eligible.

- When the 30-day SOP is not met and the group is at fault for the delay, the begin date is the date the group meets all application requirements; see FAP Fault Determination in this item.

Exception: See BEM 610 to determine the begin date for migrant/seasonal farmworkers.

BAM 115, July 1, 2020, pp. 29-30

In calculating the FAP budget, the Department considers unearned income, which includes Social Security Administration (SSA) issued benefits. BEM 503, July 1, 2020, pp. 29-31 and 35-37. The Department counts the gross amount of current SSA-issued SSI as unearned income. BEM 503, p. 35.

For FAP, a shelter expense is allowed when the FAP group has a shelter expense or contributes to the shelter expense. BEM 554, (July 1, 2020), p. 13. Heat and utility expenses can also be included as allowed by policy. The heat/utility (h/u) standard covers all heat and utility costs including cooling, except actual utility expenses; for example, installation fees etc. FAP groups who pay for cooling (including room air conditioners) are eligible for the h/u standard if they verify, they have the responsibility to pay for non-heat electric. BEM 554, pp. 15-17. A FAP group that has no heating/cooling expense but has a responsibility to pay for non-heat electricity separate from rent/mortgage or condo/maintenance fees must use the non-heat electric standard. The standard covers only non-heat electric. Verification of non-heat electric expense is needed at application or when a change is reported. BEM 554, p. 21. Verified allowable medical expenses for a senior/disabled/disabled veteran (SDV) in the FAP group are also considered. BEM 554, pp. 8-12.

In part, Petitioner's FAP application indicated the only income was SSA issued benefits; Petitioner pays rent; there is an electric non-heat utility expense; and Petitioner has a medical expense for health insurance. (Exhibit A, pp. 10-15) The Department verified the SSA issued SSI benefit from an SOLQ report. This showed the SSI gross amount was \$ [REDACTED] (Exhibit A, pp. 19-21) The submitted rent verification shows a rent expense of \$485.00 per month. (Exhibit A, p. 24) The Department requested verification of the non-heat electric expense, but it was not provided with the verification of rent in response to the Verification Checklist. (Exhibit A, pp. 3, 18, and 24; HF Testimony) Accordingly, in the initial FAP budget, the non-heat electric standard was not included. (Exhibit A, pp. 26 and 36-38) When the verification of the non-heat electric expense was submitted, the Department properly re-determined Petitioner's eligibility for FAP including this standard in the budget. (Exhibit A, pp. 30, 32, and 39-41)

The Department did not request verification of a medical expense, and no medical expense was included in the FAP budgets. (Exhibit A, pp. 16-17 and 36-41) However, Petitioner testified that he does not have any medical expenses. Accordingly, based on

the available information, the Department properly determined Petitioner's eligibility for FAP.

Petitioner testified that he disagrees with the FAP determination. Petitioner's food benefit was \$190.00 monthly when he lived in Ohio. Petitioner indicated his apartment in Michigan only has a microwave and toaster oven to cook food, which he purchased himself. Other appliances, such as a stove, are not functional or do not exist. Further, Petitioner lives in Flint, Michigan and relies on bottled water. Petitioner spends \$40.00 per month on water. Petitioner has tried a cartridge filter for tap water, but it leaves him feeling more thirsty after drinking it. (Petitioner Testimony) However, the Department's policy does not allow for consideration of additional expenses such as purchasing bottled water or only foods that can be prepared in a microwave/toaster. (HF Testimony) See also BEM 554.

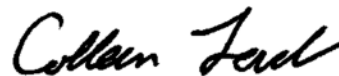
On the FAP application, Petitioner reported that he did not pay an extra fee for cooling or that he had a utility expense for air conditioning. (Exhibit A, pp. 14-15) However, the HF clarified this expense with Petitioner during the hearing and learned that he has a plug-in air condition window unit. (Petitioner Testimony) As previously noted, Petitioner has already provided verification that he is responsible for a non-heat electric expense. The HF indicated Petitioner's FAP case would be updated to reflect this expense and to determine ongoing eligibility. (HF Testimony) As this is new information reported to the Department during the hearing, it cannot be considered in reviewing the July 1, 2020 and July 29, 2020 determinations. However, as indicated by the HF, the Department will properly consider this in determining Petitioner's ongoing eligibility for FAP.

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 determined Petitioner's eligibility for FAP.

DECISION AND ORDER

Accordingly, the Department's decision is AFFIRMED.

CL/ml



Colleen Lack
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

Tamara Morris
Genesee (Union St.) County DHHS – via
electronic mail

BSC2 – via electronic mail

M. Holden – via electronic mail

D. Sweeney – via electronic mail

Petitioner

[REDACTED] – via first class mail
[REDACTED]
[REDACTED], MI [REDACTED]