



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: October 13, 2020
MOAHR Docket No.: 20-005738
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 October 7, 2020. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Michelle Collins, Eligibility Specialist and Hearings Coordinator, and Katie Ekaiko, Eligibility Specialist.

ISSUE

Did the Department properly deny Food Assistance Program (FAP) to Petitioner?

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 receives Retirement Survivors Disability Insurance (RSDI) benefits in the amount of \$1,263.00 before a deduction is made in the amount of \$144.60 for his Medicare Part B premium.
2. Two other household members also receive RSDI in the amount of \$315.00 per person per month.
3. Petitioner is responsible for a homeowner's insurance premium of \$879.00 annually.
4. Petitioner is responsible for \$ [REDACTED] in summer property taxes and \$ [REDACTED] in winter property taxes.
5. Petitioner is responsible for his heat and utility expenses.

6. On August 14, 2020, the Department issued a Notice of Case Action to Petitioner informing him that he was ineligible for FAP benefits based upon excess income.
7. On August 26, 2020, the Department received Petitioner's request for hearing disputing the denial of FPA benefits.

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 Department's denial of FAP benefits. To determine whether the Department properly determined Petitioner's FAP eligibility, 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 2020), 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.

Petitioner received \$1,263.00 in gross RSDI benefits. Two other household members also receive RSDI benefits in the amount of \$315.00 per month per person. Since RSDI benefits are received on a monthly basis, there is no need to further standardize Petitioner's household income. Therefore, the total gross household income is \$1,893.00.

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, he 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 (January 2020), p. 1; BEM 556, pp. 3-6.

The Department budgeted \$0.00 for child support, dependent care, and medical expenses. The Department conceded at the hearing that Petitioner was not afforded a deduction for his Medicare Part B premium and that was an error to be corrected. Since the premium is \$144.60 per month, the Department should have budgeted a medical expense deduction of \$110.00 per month. The Department properly budgeted the standard deduction of \$161.00 for a group size of three in accordance with Department policy. RFT 255 (January 2020), p. 1.

After consideration of all these expenses, Petitioner's Adjusted Gross Income (AGI) is \$[REDACTED]. Once the Adjusted Gross Income is calculated, the Department must then consider the Excess Shelter Deduction. The parties agree that Petitioner has an annual homeowner's insurance premium of \$879.00 which when broken down to a monthly payment is \$73.25. Petitioner also has summer property taxes of \$[REDACTED] and winter property taxes of \$[REDACTED]. In calculating Petitioner's budget, the Department only considered Petitioner's summer property tax and divided it by 12 to determine a monthly payment. A more appropriate determination of Petitioner's monthly responsibility for property taxes is to add the summer and winter bills together and divide by 12 for a monthly tax bill of \$[REDACTED]. Therefore, Petitioner has a total housing expense of \$222.53. In addition, he is responsible for his heat and electric bills. The Department properly afforded Petitioner the heat and utility standard deduction (H/U) of \$518.00. 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 such as trash, water, sewer, or telephone expenses. *Id.* Once the utility standards are considered, the housing expense (\$222.53) and utility standards (\$518.00) are added together for a total housing expense of \$740.53. BEM 556, p. 5. Petitioner's total housing expense is then reduced by half of his AGI (\$[REDACTED]) resulting in a negative number and therefore no excess shelter cost. *Id.*

If Petitioner had an excess shelter cost, it would then be subtracted from his AGI to achieve his Net Income. Since Petitioner has no excess shelter cost, his net income is equal to his AGI or \$[REDACTED]. BEM 556, pp. 5-6. At this point, Petitioner's Net Income is considered against the Net Income Limit for a group size of three, \$1,778.00. RFT 250 (October 2019), p. 1; BEM 550 (January 2017), p. 1. Petitioner's group's income is below the Net Income Limit.

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 Department policy when it denied Petitioner's FAP benefits based upon excess net income.

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. Reprocess Petitioner's eligibility for FAP benefits;
2. If otherwise eligible, issue supplements to Petitioner for benefits not previously received; and,
3. Notify Petitioner in writing of its decision.

AMTM/cc



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

Via Email:

MDHHS-Wayne-55-Hearings
BSC4-HearingDecisions
M. Holden
D. Sweeney
MOAHR

Petitioner- Via USPS:

