



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: November 6, 2020

MOAHR Docket No.: [REDACTED]

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 November 4, 2020. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Valarie Foley, 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 [REDACTED] 2020, the Department received verification of Petitioner's property taxes valued at \$[REDACTED] for Summer 2019 and \$[REDACTED] for Winter 2019.
2. Around the same time, the Department received verification of Petitioner's wages from employment with paychecks dated May 18, 2020 for \$[REDACTED]; June 3, 2020 for \$[REDACTED]; and June 18, 2020 for \$[REDACTED].
3. Around the same time, a review was held in Petitioner's case and during the interview process, Petitioner informed her case worker that she was unemployed from June 10th through September, when kids go back to school.
4. Petitioner testified that she submitted verification of her homeowner's insurance to the Department, but the Department has no records of the verification.

5. On September 2, 2020, the Department issued a Notice of Case Action to Petitioner informing her that she was eligible for \$36.00 in FAP benefits per month effective August 1, 2020 based upon a group size of three, with \$[REDACTED] in income, a standard deduction of \$161.00, a housing expense of \$32.31, and the telephone standard deduction of \$30.00.
6. On September 21, 2020, the Department received Petitioner's request for hearing disputing the Department's calculation of FAP benefits.
7. On September 25, 2020, the Department adjusted Petitioner's FAP benefit rate to \$64.00 per month effective October 1, 2020 after inclusion of the \$547.00 heat and utility standard deduction (H/U).

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 calculation of her 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 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 had income of \$[REDACTED], \$[REDACTED], and \$[REDACTED] for pay dates May 18, 2020; June 3, 2020; and June 18, 2020. Looking back 30 days from the most recent paystub to the time of the Department's decision, the Department should have considered the paystubs from June exclusively. In addition, since these paystubs were not paid on a

consistent schedule, Petitioner's income is simply added together. BEM 505, pp. 8-9. Petitioner's monthly income is \$ [REDACTED].

Petitioner also testified that she advised her case worker during the review interview that her employment had ended for the summer, but her caseworker never asked for verification of the break in employment and her income continued to be budgeted. Policy provides that verification of circumstances is required when a reported change affects eligibility or benefit level. BAM 130 (April 2017), p. 1. As discussed above, income is used in determining eligibility and benefit level. In addition, policy provides that when a change is reported in a FAP case, the Department must take action on the reported change within ten days. BAM 220 (July 2020), p. 7. Since the Department failed to verify Respondent's reported change, and failed to process the reported change in income, the Department has not properly calculated Petitioner's FAP benefit rate.

For purposes of a thorough review of the calculation of Petitioner's FAP benefit rate, the remainder of the factors used to determine FAP eligibility follow below.

After consideration of income, the Department considers all appropriate deductions and expenses. No evidence was presented that Petitioner or a group member has currently been determined to be a Senior, Disabled, or disabled Veteran (SDV) group member; therefore, she is eligible for the following deductions to income:

- Dependent care expense.
- Excess shelter deduction.
- Court ordered child support and arrearages paid to non-household members.
- Standard deduction based on group size.
- 20% Earned income deduction.

BEM 550 (January 2017), pp. 1-1; BEM 554 (August 2020), p. 1; BEM 556 (July 2019), pp. 3-6.

No evidence was presented that Petitioner has child or dependent care expenses. 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 three. RFT 255 (January 2020), p. 1; BEM 556, p. 4.

After consideration of each of these deductions, Petitioner's Adjusted Gross Income (AGI) would be calculated by subtracting each of these expenses from her gross income.

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). Housing costs include rent, mortgage, a second mortgage, home

equity loan, condominium fees, lot rent, property taxes, homeowner's insurance for the structure, or other payments leading to ownership of the shelter occupied by the FAP group. BEM 554, pp. 13-14. Petitioner has property taxes and homeowner's insurance premiums. Petitioner has verified property taxes annually of \$ [REDACTED] or \$ [REDACTED] per month. Her homeowner's insurance premium is \$87.00 per month; however, this expense is unverified despite discussions or attempts to verify the expense by Petitioner. In addition to these expenses, Petitioner is also responsible for her utilities. The heat and utility standard deduction (H/U) covers all heat and utility costs including cooling except actual utility expenses (repairs or maintenance). BEM 554, p. 15. The Department is required to annually review standards such as the H/U and adjust the standard 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 even if responsible for other utility items because the H/U is considered to be all encompassing. *Id.* The Department failed to provide Petitioner the H/U until the Notice of Case Action issued on September 25, 2020. However, the September 25th Notice of Case Action did not implement the correction of adding the H/U to Petitioner's budget until October 1, 2020; therefore, the Department has not corrected its error for Petitioner's FAP budget that was effective August 1, 2020.

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 three to determine her benefit rate. RFT 260. Since Petitioner's income circumstances as well as homeowner's insurance were unverified and because the H/U was not provided to Petitioner by the Department, Petitioner's FAP benefit rate has not been calculated here.

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 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 effective August 1, 2020;
2. If otherwise eligible, issue supplements to Petitioner for benefits not previously received; and,

3. Notify Petitioner in writing of its decision.

AM/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-19-Hearings
BSC4-HearingDecisions
M. Holden
D. Sweeney
MOAHR

Petitioner- Via USPS:

