



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 10, 2020
MOAHR Docket No.: 20-006140
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 Juanita Munoz, Hearings Facilitator.

ISSUE

Did the Department properly deny Petitioner's Family Independence Program (FIP) and Food Assistance Program (FAP) Application?

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 Petitioner's Application for FIP and FAP benefits listing herself and two grandchildren as household members and indicating that she was requesting assistance for herself and one of her two grandchildren.
2. Petitioner is [REDACTED] years old.
3. Petitioner receives \$1,716.60 per month in gross Retirement Survivors Disability Insurance (RSDI) benefits.
4. Petitioner also receives a pension of \$[REDACTED] per month.

5. Petitioner is a landlord and prior to the COVID-19 Pandemic received \$ [REDACTED] per month in rental income; no evidence was presented regarding Petitioner's expenses for managing the rental property.
6. Petitioner also receives \$ [REDACTED] per month in self-employment income; no evidence was presented regarding Petitioner's expenses for the production of self-employment income.
7. Each of Petitioner's grandchildren receives \$385.00 per month in RSDI benefits.
8. Petitioner credibly testified that she has a mortgage, homeowner's insurance, and property taxes for her home; the Department presented no evidence regarding these items.
9. On August 31, 2020, the Department issued a Notice of Case Action to Petitioner advising her that her Application for FIP and FAP had been denied due to excess income for both programs.
10. On September 21, 2020, the Department received Petitioner's request for hearing disputing the denial of FIP and FAP 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).

Food Assistance Program (FAP)

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. FAP group composition is established by determining who lives together, the relationships of those living together, whether they purchase and prepare food together or separately, and whether the individuals reside in eligible living situations. BEM 212 (July 2019), p. 1. A primary caretaker is the person who is primarily responsible for the child's day-to-day care and supervision in the home where the child sleeps more than half the days in a calendar month on average in a

twelve-month period. BEM 212, p. 2. Primary caretakers are always in the same group as the children they care for in FAP cases. BEM 212, p. 3. Since Petitioner is the primary caretaker for her two granddaughters, Petitioner's FAP group size is three.

The Department determines a client's eligibility for program benefits based on the group'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 and her granddaughters have a combined gross RSDI income of \$2,486.60 per month. Petitioner also has a gross pension benefit of \$[REDACTED] per month. Since these income sources are received on a monthly basis, no further efforts to standardize the income are required.

Next, Petitioner has rental income and self-employment income, each \$[REDACTED] per month. The Department budgeted \$[REDACTED] for self-employment income but did not provide any information as to how the \$[REDACTED] was calculated.

Rental income is sometimes considered as unearned income and sometimes as self-employment income. BEM 502 (October 2019). In-home rentals include situations where a landlord rents a portion of their own dwelling to another individual. BEM 504 (October 2019), p. 1. In-home rentals count the gross payment of rent minus expenses as gross earned income from self-employment. BEM 504, p. 2. Expenses which may be budgeted are either 60% of the rental payment or actual rental expenses if the landlord chooses to claim and verify the expense. *Id.* Other rental income (excluding farmland, in-home, and room and board income) is treated as earned or unearned income depending on the number of hours used to actively manage the property. *Id.* If the time used is more than 20 hours per week, it is considered earned income and 65% of the rental payments or the actual rental expenses are considered if verified and reported. BEM 504, p. 3. The Department presented no evidence of the circumstances of Petitioner's rental property nor did it present any evidence of expenses considered in calculating Petitioner's rental income. It is notable that Petitioner credibly testified that she has not received any rental income since the start of the COVID-19 Pandemic.

Turning to the issue of self-employment income, the amount of self-employment income before any deduction is called total proceeds. BEM 502, p. 3. Countable income from self-employment equals the total proceeds minus allowable expenses of producing the income. *Id.* Allowable expenses are the greater amount of 25% of total proceeds or the actual expenses if claimed and verified by the client. *Id.* Again, the Department failed to present any evidence of the source of the income and failed to provide details of how the self-employment income and expenses were considered.

The result of adding all of these income sources together is Petitioner's gross income. Since the Department failed to present evidence of how Petitioner's rental and self-employment income were calculated, the Department has not met its burden of proof in establishing that it acted in accordance with Department policy in denying Petitioner's FAP Application. However, for purposes of a thorough review of Petitioner's FAP case, a review of the remaining eligibility considerations follows below.

At the hearing, the Department testified that Petitioner was over the gross income limit which is why no evidence was presented regarding Petitioner's housing and utility expenses. Policy provides that groups containing a Senior, Disabled, or disabled Veteran (SDV) group member are not subject to the gross income test. BEM 550 (January 2017), p. 1. Seniors are defined as individuals ages 60 and older. BPG Glossary (July 2020), p. 64. Since Petitioner is age ■■■, her group is not subject to the gross income test and the Department's testimony was inaccurate and the Department should have reviewed Petitioner's Net Income.

After consideration of income, the Department considers all appropriate deductions and expenses. 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.
- 20% earned income deduction.

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

No evidence was presented that Petitioner has child support or dependent care expenses. Therefore, the Department properly budgeted these items as \$0.00. The Department properly budgeted Petitioner's medical expenses as \$110.00 (\$144.50-\$35.00=\$109.50 rounded up to \$110.00). 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). Petitioner credibly testified that she has a mortgage, property insurance, and homeowner's insurance premium, which are all eligible housing costs in

the Excess Shelter Deduction calculation. BEM 554, pp. 13-14. In addition, to the housing expense, the Department considers a client's utility expenses. 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 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 because it is considered to be comprehensive and include all utilities. *Id.*

After Petitioner's Excess Shelter Deduction is calculated, it is then subtracted from her AGI to achieve her Net Income. *Id.* If Petitioner's Net Income is less than the Net Income Limit based upon group size, Petitioner is eligible for a FAP benefit based upon her total Net Income amount and her group size. BEM 550, p. 1; RFT 260.

Since the Department failed to provide sufficient evidence of how Petitioner's rental income, self-employment income, and housing expenses were considered, the Department has not met its burden of proof in establishing that it properly denied Petitioner's FAP Application.

Family Independence Program (FIP)

FIP was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101-.3131.

In this case, Petitioner disputes the Department's denial of her FIP Application based upon excess income. Financial need must exist in order to receive FIP benefits. BEM 518 (January 2020), p. 1. It exists when the certified group passes the Qualifying Deficit Test, Issuance Deficit Test, and Child Support Income Test. *Id.*

The Qualifying Deficit Test is completed by subtracting budgetable income from the certified group's payment standard for the application month. BEM 518, p. 3. This reviews the first two application months in which the group could be eligible for an assistance payment. *Id.*

The Issuance Deficit Test subtracts budgetable income from the certified group's payments standard for the benefit month. *Id.* The benefit month is the month an assistance payment covers. *Id.* The group is ineligible for the benefit month if no deficit exists or the group has a deficit less than \$10. *Id.*

In the Child Support Income Test, the FIP group's countable income plus the amount of certified support (or amount of support to be certified) must be less than the certified

group's payment standard. *Id.* This test is only required when the group has certified support of more than \$50. BEM 518, p. 4.

The payment standard is the maximum benefit amount that can be received by the group. BEM 515 (October 2018), p. 1. The payment standard is determined by group size. BEM 515, p. 1; RFT 210 (April 2017), p. 1. Policy provides that siblings must be in the same group if living together. BEM 210 (July 2020), p. 5. In addition, Petitioner noted on her Application that she wanted to be part of the FIP group. Therefore, Petitioner has a group size of three, which would give her a standard payment of \$492.00 as Petitioner is an eligible grantee (a member of the FIP group). BEM 515, p. 1; RFT 210, p. 1; BEM 210, p. 5.

Financial need exists if there is a least a \$10 deficit after income is budgeted in the issuance deficit test and the group passes the child support income test. BEM 518, p. 2. If the group fails either test, the group is ineligible for assistance. *Id.* The only exception to the \$10 deficit applies at application when the certified group must have a deficit of at least \$1 in the qualifying deficit test to be eligible for FIP. BEM 518, p. 3. If the group fails this test, the group is denied benefits. *Id.*

As discussed above, the Department failed to provide sufficient evidence regarding Petitioner's rental and self-employment income and because the same policies are applied here, Petitioner's eligibility cannot be determined. BEM 502; BEM 504. Therefore, the Department has not met its burden in establishing that Petitioner's Application for FIP was properly denied.

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 denied Petitioner's FIP and FAP Application due to excess 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 FIP and FAP Application from [REDACTED], 2020;
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-41-Hearings
BSC4-HearingDecisions
B. Sanborn
D. Sweeney
M. Holden
MOAHR

Petitioner- Via USPS:

