



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: December 14, 2020
MOAHR Docket No.: 20-006624
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 December 10, 2020. The Petitioner was represented by his daughter [REDACTED]. The Department of Health and Human Services (Department) was represented by Collen Corey, Assistance Payments Supervisor.

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 Petitioner's completed Redetermination on which he indicated that there were three people in the home including himself, his wife, and an unrelated person; that he and his wife both receive Supplemental Security Income (SSI) of \$587.59 per month; that he has a rental expense of \$350.00, a medical transportation expense of \$12.00 weekly, a medication copay of \$25.00 month, the cost of a prescribed supplement at \$32.00 per month, and finally, a phone expense of \$40.00 per month.
2. On September 3, 2020, the Department issued a Notice of Case Action to Petitioner notifying him effective October 1, 2020, he was eligible for \$54.00 per month in FAP benefits for a group size of two based upon \$1,196.00 in unearned income, a \$161.00 standard deduction, \$33.00 for medical expenses, \$350.00 for housing costs, and no deductions for any utility standards.

3. On October 20, 2020, the Department received Petitioner's request for hearing disputing the Department's calculation of her FAP benefit rate.
4. A pre-hearing conference was held on October 30, 2020 at which time some things were addressed, but others were not, and none of the corrections were back dated to October 1st.
5. On December 8, 2020, the Department issued another Notice of Case Action increasing Petitioner's FAP benefit rate to \$110.00 per month but did not back date it to October 1st.

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 his FAP benefit rate. To determine whether the Department properly calculated it, 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. 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 and his wife both receive \$587.50 per month in SSI benefits. Since SSI benefits are received monthly, there is no need to further standardize the household income. Petitioner's total gross income for the household is \$1,175.00.

After consideration of income, the Department considers all appropriate deductions and expenses. There was evidence presented that Petitioner and his wife are either a

Senior, Disabled, or Disabled Veteran. BEM 550. Therefore, they are 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 and dependent care expenses. The Department also budgeted \$33.00 for a medical expense deduction but does not know how it was calculated or what was considered. If Petitioner's medical expenses were verified and considered as they are listed on the Redetermination, the total expense is \$108.60 (\$12 medical transport expense weekly time 4.3 plus \$25 medication copay and \$32 supplement cost) minus the \$35.00 offset for a total medical expense deduction of \$73.60. Since the Department presented insufficient evidence regarding the medical expense deduction, \$74.00 (rounded up to the nearest dollar) will be used for the remainder of this decision as the medical expense deduction. The Department properly budgeted the standard deduction of \$161.00 for a group size of two 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. Petitioner has a verified monthly rental expense of \$350.00 per month which includes the cost of his utilities except his phone. Petitioner's phone bill is \$40.00 per month as listed on his Redetermination. The Department properly excluded 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. Since Petitioner is not responsible for his heat and electric expenses, he is not eligible for this deduction. However, he is eligible for the telephone standard deduction of \$29.00. RFT 260 (October 2020), p. 1. The telephone standard deduction is provided to FAP groups which do not have a heating or cooling expense but have a responsibility to pay for a traditional land-line service and cellular phone service. BEM 554, p. 21. It is notable that the Department failed to provide Petitioner with the telephone standard deduction based upon the Notice of Case Action dated September 3, 2020. Once the utility standards are considered, the housing expense (\$350.00) and utility standards (\$29.00) are added together for a total housing expense of \$379.00. BEM 556, p. 5. Petitioner's total housing expense is then reduced by half of his AGI (\$470.00) 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 Food Assistance Issuance Tables for a FAP benefit rate of \$92.00 per month. RFT 260 (October 2019), p. 24. The Department properly calculated Petitioner's FAP benefit rate.

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 calculated Petitioner's FAP benefit rate effective October 1, 2020.

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 eligibility for FAP benefits effective October 1, 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-Oakland-District-IV-Hearings
BSC4-HearingDecisions
D. Sweeney
M. Holden
MOAHR

Petitioner- Via USPS:

