



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR



Date Mailed: December 18, 2020
MOAHR Docket No.: 20-006762
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 14, 2020. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Michelle Martoia.

ISSUE

Did the Department properly deny Petitioner's 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. Petitioner has a group size of five including herself, her grandmother, her son, and her two daughters.
2. Petitioner's grandmother receives \$345.00 per month in Supplemental Security Income (SSI) in addition to the \$14.00 State Supplemental Security Income Payment (SSP) benefit and \$430.00 in Retirement Survivors Disability Insurance (RSDI) benefits.
3. The household receives child support for all three of Petitioner's children.
4. Petitioner is employed.
5. Petitioner and her son were receiving Unemployment Compensation Benefits (UCB).

6. Petitioner's daughter [REDACTED] (Daughter 1) receives a gross SSI benefit in the amount of \$783.00 per month and has a \$20.00 per month overpayment recouped from the gross SSI payment.
7. On [REDACTED], 2020, the Department received Petitioner's Application for FAP benefits.
8. On October 5, 2020, the Department issued a Notice of Case Action to Petitioner denying her FAP benefits for September 18, 2020 through September 30, 2020 due to excess income; approving her for FAP benefits in October 2020 at a rate of \$68.00 for a five person group; and approving her for \$74.00 per month starting November 2020 for a five person group.
9. The October and November 2020 budgets were based upon \$1,082.00 in earned income, \$3,086.00 in unearned income, a standard deduction of \$212.00, \$200.00 in dependent care expenses, \$2,320.13 in housing costs, and the \$547.00 heat and utility standard deduction (H/U).
10. On October 8, 2020, the Department issued a new Notice of Case Action to Petitioner informing her that she was denied FAP benefits for November 2020 ongoing due to excess net income for a group size of five with the following items budgeted: \$1082.00 for earned income, \$3,589.00 for unearned income, \$212.00 for the standard deduction, \$200.00 for dependent care expenses, \$2,320.13 for housing costs, and \$547.00 for H/U.
11. On October 21, 2020, the Department received a verbal request for hearing disputing the Department's denial of FAP eligibility.
12. On October 29, 2020, the Department issued a third Notice of Case Action to Petitioner denying her FAP benefits for September 2020 and November 2020, ongoing, due to excess net income based upon the following budgeted items: \$1,082.00 in earned income, \$3,310.00 in unearned income, a \$212.00 standard deduction, \$200.00 for dependent care costs, \$1,447.33 for housing costs, and the \$547.00 H/U.
13. At the hearing on December 14, 2020, the parties agreed to have the final Notice of Case Action from October 29, 2020 reviewed as part of this decision due to the numerous changes in the budget and desire for judicial economy.

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 her FAP Application for [REDACTED] 2020 and [REDACTED] 2020, ongoing. To determine whether the Department properly determined Petitioner's FAP eligibility, the evaluation first starts with consideration of all countable earned and unearned income available to the group. 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 works as a home health provider and is paid on a monthly basis at a rate of \$1,082.25. Since the income is received monthly, there is no need to further standardize the income. However, as noted below, Respondent received UCB income. Initially, Respondent received a full UCB benefit of \$724.00 bi-weekly, but it was reduced as of September 26th because she resumed work as a home health provider on a part-time basis. The Department did not present any evidence that it considered Petitioner's initial layoff at the time of Application or her return to work on a part time basis when considering her earned income. The Department simply continued to budget Petitioner's earned income as if she was working full time. This was an error on the part of the Department and affects the entire determination of eligibility for Petitioner. For purposes of thoroughness, the remainder of the elements to determine Petitioner's FAP eligibility are reviewed below.

Petitioner's group has many sources of unearned income including child support, SSI, SSP, RSDI, and UCB.

Child support payments are considered unearned income. BEM 503 (September 2020), p. 6. Policy further provides that the average of child support payments received in the previous three calendar months should be budgeted unless a change is expected; amounts which are unusual or not expected to continue should not be considered. BEM 505, p. 4. The following child support payments were received for Daughter 1: June 2020 \$60.00; July 2020 \$78.81; August 2020 \$57.97. The average child support income for Daughter 1 was \$65.59. For Daughter 2, \$304.00 was received in August and \$78.54 was received in September. Since the \$304.00 was unusual and not expected to continue, the Department simply budgeted \$78.54. Finally, Petitioner's son's child support income was as follows: June \$14.37; July \$33.63; and August

\$11.59. The average child support income for Petitioner's son was \$19.86. Therefore, average total household child support income was \$163.99.

RSDI, SSI, and SSP are all considered unearned income. BEM 503, pp. 29-30, 35. Each is received on a monthly basis and there is no need to further standardize these sources of income. Petitioner's grandma receives \$345.00 in SSI benefits in addition to \$14.00 per month in SSP benefits and \$430.00 in RSDI benefits (\$5,160.00 annually divided by 12 months). Daughter 1 receives \$783.00 in gross monthly SSI and \$20.00 is deducted to recoup an overpayment. The overpayment deduction is not included as gross income. BEM 500, p. 6. Therefore, total household unearned income from RSDI, SSI, and SPP is \$1,552.00.

UCB is counted as the gross amount towards unearned income. BEM 503, p. 38. In situations where a client has some earnings, the UCB is reduced and the reduced amount is the gross amount for FAP purposes. *Id.* Prior to September 26, 2020, Petitioner received \$724.00 bi-weekly in UCB. On and after September 26, 2020, Petitioner began receiving \$614.00 biweekly as a result of the reduction in benefits due to her earned income. In addition, Petitioner's son received \$358.00 bi-weekly in UCB. To standardize bi-weekly income, the Department must average the income and multiply it by 2.15. BEM 505, pp. 8-9. Prior to September 26th, Petitioner's standardized UCB was \$1,556.60 and after it was \$1,302.10. Petitioner's son's standardized UCB was \$769.70.

After each income source is considered, all sources of income are added together for her total gross income. Next, the Department considers all appropriate deductions and expenses. Petitioner has at least two group members who are either a Senior, Disabled, or disabled Veteran (SDV) group member; therefore, the group 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.
- Medical expenses greater than \$35.00 for the SDV group members
- 20% earned income deduction for any earnings

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

Petitioner does not have a child support expense but does have a \$200.00 dependent care expense. In addition, Petitioner has provided the Department with proof of medical expenses for her grandmother. No medical expenses were budgeted in September or November 2020 and the Department was unable to explain why. At a minimum, the Department should have budgeted \$109.00 in both months for her grandmother's Medicare Part B premium (\$144.00-35.00=109.00). There was at least one additional medical expense for Petitioner's grandmother of \$600.00 which may or may not have

been budgeted in October 2020, but the Department did not present any evidence to establish whether it was budgeted or not. Next, Petitioner has a group size of five so she is eligible for the standard deduction of \$203.00 in September 2020 and \$212.00 in November 2020. RFT 255 (January 2020 & October 2020), p. 1; BEM 556, p. 4. The Department has shown that Petitioner was properly afforded the \$212.00 deduction in November 2020, but not the standard deduction of \$203.00 in September 2020. Finally, as discussed above, the Department has not shown that Petitioner's earned income was properly considered and by extension, it is not shown that Petitioner's earned income deduction was properly considered.

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. Since questions were raised as to Petitioner's earned income, medical expenses, standard deduction, and earned income deduction, her AGI is not calculated here.

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 has a mortgage of \$814.00; however, the Department concedes that it budgeted the mortgage expense improperly. 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 (October 2019), p. 15. Effective October 1, 2019, the H/U was \$518.00. RFT 255 (January 2020), p. 1. Effective October 1, 2020, the H/U was \$547.00. The Department has not shown that the H/U was properly budgeted for September 2020 but has shown that it was properly budgeted for November 2020. FAP groups that receive the H/U do not receive any other individual utility standards. *Id.* Due to the numerous questions raised in the calculation of this budget, Petitioner's Excess Shelter cost cannot be calculated. *Id.*

The expenses outlined here are the only expenses considered for purposes of calculating the FAP budget and eligibility determination.

If Petitioner has an excess shelter cost, this cost is subtracted from her AGI to achieve her Net Income. If she does not have an excess shelter cost, her AGI is equal to her Net Income. The Net Income Limit for a group size of five is \$2,515.00 for September 2020. RFT 260 (October 2019); BEM 550 (January 2017), p. 1. The Net Income Limit for a group size of five is \$2,557.00 for November 2020, ongoing. RFT 260 (October 2020), p. 1; BEM 550.

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

determined Petitioner's eligibility for FAP in September 2020 and November 2020, ongoing.

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 Application from [REDACTED], 2020 to determine her FAP eligibility for September 2020 and November 2020, ongoing;
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-17-Hearings
BSC4-HearingDecisions
M. Holden
D. Sweeney
MOAHR

Petitioner- Via USPS:

