



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: March 1, 2021
MOAHR Docket No.: 20-008099
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 February 24, 2021. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Lashana Threlkeld, Assistance Payments Worker 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 FAP Application indicating that she did not have any income.
2. On March 18, 2020, the Department issued a Notice of Case Action to Petitioner informing her that she was eligible for \$194.00 per month in FAP benefits for a group size of one with no income, a standard deduction of \$161.00, housing costs of \$400.00, and finally a telephone standard deduction of \$30.00.
3. Petitioner received the \$20.01 Low Income Home Energy Assistance Program (LIHEAP) in July of 2020.
4. On December 21, 2020, the Department received Petitioner's Redetermination for benefits on which she indicated she had employment with [REDACTED] earning \$25.00 per month, that she had an arrangement allowing her to clean the home

where she lived instead of paying room and board, and that she was receiving Unemployment Compensation Benefit (UCB) income in the amount of \$348.00 twice per month.

5. On the same day, a Redetermination Interview was held, and Petitioner reported the arrangement to clean instead of pay rent, working once every two months for [REDACTED] earning \$25.00, that she was receiving UCB income, and she is not responsible for any utilities or expenses.
6. On the same day, the Department issued a Notice of Case Action to Petitioner informing her that she was approved for \$46.00 per month in FAP benefits effective January 1, 2021 based upon \$25.00 earned income, \$855.00 in unearned income, a standard deduction of \$167.00, and the heat and utility standard deduction (H/U) of \$537.00.
7. On December 23, 2020, the Department received Petitioner's request for hearing disputing the Department's reduction in her FAP benefits from \$194.00 per month to \$46.00 per month.

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 effective January 1, 2021. 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. 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 (January 2021), 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. 6-8. A standard monthly amount must be determined for each income source used in the budget. BEM 505, pp. 8-9. For income received on a weekly basis, the income is

averaged and multiplied by 4.3. BEM 505, p. 8. For income received bi-weekly, the income is averaged and multiplied by 2.15. Finally, income received twice per month, is added together. For irregular income, the standard monthly amount is determined by adding together the income and dividing by the number of months under consideration. Finally, in-kind benefits or income in any form other than money is not considered in determining totaling income. BEM 500, pp. 9-10.

Petitioner receives UCB income as well as income from employment. Petitioner filed her FAP Redetermination on December 21, 2020. Therefore, in the 30 day period prior to her filing of her Redetermination, she received \$398.00 on December 12, 2020 and \$398.00 on November 28, 2020, and \$398.00 on November 14, 2020. Since Petitioner's UCB income is received bi-weekly, her average income is multiplied by 2.15 to achieve a standardized income of \$855.70 per month. Petitioner's employment income is received either monthly or every other month as noted by her Redetermination and her interview. Since the evidence is unclear, this decision assumes the more favorable circumstance for Petitioner that her income is received once every other month. Therefore, her standardized income for employment is \$12.50 (\$25 divided by two months because it is an irregular income source).

Although Petitioner was working for her landlord in exchange for rent, the in-kind benefit is not considered as a source of income for purposes of FAP eligibility.

Petitioner has no other sources of income; therefore, the total household income is \$868.20.

After consideration of income, the Department considers all appropriate deductions and expenses. No evidence was presented that Petitioner is a Senior, Disabled, or disabled Veteran (SDV); 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 (October 2020), pp. 1; BEM 554 (January 2021), p. 1; BEM 556 (January 2021), pp. 3-6.

No evidence was presented that Petitioner has any child support or dependent care expenses. Petitioner receives a 20% earned income deduction from her budgeted earned income totaling \$2.50. In addition, Petitioner has a group size of one so she is eligible for the standard deduction of \$167.00. RFT 255 (January 2021), p. 1; BEM 556, p. 4.

After consideration of each of these deductions, Petitioner's Adjusted Gross Income (AGI) would be calculated by subtracting them from her gross income. Therefore, Petitioner's AGI is \$698.70.

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 did not have a housing expense at the time of her Redetermination. 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. Although Petitioner informed the Department that she did not have any expenses at the time of Redetermination, she received a LIHEAP in July 2020 totaling \$20.01. Policy provides that any FAP groups that receive a LIHEAP greater than \$20.00 in the application month or in the immediately preceding 12 months prior to the application are eligible for the H/U. BEM 554, p. 20. Therefore, Petitioner is eligible for the H/U of \$537.00. FAP groups that receive the H/U do not receive any other individual utility standards. *Id.* The expenses outlined here are the only expenses considered for purposes of calculating the FAP budget and determining eligibility. Petitioner's total housing cost is \$537.00 which is reduced by 50% of Petitioner's AGI (\$349.35) resulting in an Excess Shelter Deduction of \$188.00. *Id.*

Next Petitioner's excess shelter deduction is subtracted from her AGI to determine her Net Income, \$510.00. *Id.* Finally, Petitioner's Net Income is compared against the Food Assistance Issuance Tables found in RFT 260 for a monthly FAP benefits rate of \$81.00 per month. The Department did not properly calculate 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 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 eligibility effective January 1, 2021;

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 Elizabeth Hertel, 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:

