



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: March 1, 2021
MOAHR Docket No.: 20-008290
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

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, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Maryam Hedgespeth, Eligibility Specialist.

ISSUE

Did the Department properly determine Petitioner's Food Assistance Program (FAP) eligibility?

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 was an ongoing FAP recipient.
2. Petitioner's household consisted of herself and her son.
3. Effective January 1, 2021, Petitioner received an increase in her Retirement, Survivors, and Disability Insurance (RSDI) income from \$1,307 per month to \$1,324 per month (Exhibit A, pp. 30-32).
4. Effective January 1, 2021, Petitioner's son received an increase in his RSDI income from \$538 per month to \$545 (Exhibit A, pp. 33-35).
5. On December 5, 2020, the Department sent Petitioner a Notice of Case Action informing her that her FAP benefits were decreasing to \$16 per month effective January 1, 2021, ongoing (Exhibit A, pp. 20-24).

6. On December 28, 2020, Petitioner submitted a request for hearing disputing the Department's actions related to her FAP and Medicare Savings Program (MSP) benefit cases.

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).

FAP

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 was an ongoing FAP recipient. Effective January 1, 2021, Petitioner and her son received an increase in their RSDI income. As a result, the Department redetermined Petitioner's FAP eligibility and determined she was eligible for FAP benefits in the amount of \$16 per month. The Department presented a FAP budget to establish the calculation of Petitioner's FAP benefit amount (Exhibit A, p. 39).

All countable earned and unearned income available to the client must be considered in determining a client's eligibility for program benefits and group composition policies specify whose income is countable. BEM 500 (July 2017), pp. 1-5. For RSDI, the Department counts the gross benefit amount as unearned income. BEM 503 (January 2020), p. 28.

Per the budget provided, the Department included \$1,852 in unearned income in the calculation of Petitioner's FAP benefit amount. The Department presented Petitioner's and Petitioner's son's State Online Query (SOLQ) reports showing that Petitioner's RSDI income increased from \$1,307 per month to \$1,324 per month and Petitioner's son's RSDI income increased from \$538 to \$545 per month.

The Department testified that it included Petitioner's son's updated RSDI income of \$545 per month but utilized the outdated RSDI income for Petitioner of \$1,307 per month. It is unclear why the Department used Petitioner's son's updated RSDI income but did not update Petitioner's RSDI income. However, the error was in Petitioner's favor. Therefore, the error is harmless. Thus, the Department properly considered Petitioner's household income.

The deductions to income on the net income budget were also reviewed. There was evidence presented that the Petitioner's group includes a senior/disabled/veteran (SDV). BEM 550. Thus, the group is 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.

BEM 554 (January 2020), p. 1; BEM 556 (January 2020), p. 3.

Petitioner's FAP benefit group size of two justifies a standard deduction of \$167. RFT 255 (January 2020), p. 1. There was no evidence presented that Petitioner had any out-of-pocket dependent care or child support expenses. Therefore, the budget properly excluded any deduction for dependent care or child support expenses.

As Petitioner qualifies as an SDV member, the group is entitled to deductions for verifiable medical expenses that the SDV member incurs in excess of \$35. BEM 554, p. 1. When budgeting expenses, Department policy requires that expenses are used from the same calendar month as the month for which benefits are being determined. BEM 554, p. 3. As an example, policy states June expenses are used to determine June's benefits. BEM 554, p. 3. However, expenses remain unchanged until the FAP group reports a change. BEM 554, p. 3. The Department must act on a change reported by means other than tape match within 10 days of becoming aware of the change. BAM 220 (April 2017), p. 7. Changes which result in an increase in the household's benefits must be effective no later than the first allotment issued 10 days after the date the change was reported, provided any necessary verification was returned by the due date. BAM 220, p. 7. For one-time only medical expenses, the Department will allow the expense in the first benefit month the change can affect. BEM 554, p. 9.

The Department did not include a medical expense deduction in Petitioner's FAP budget. The Department testified that Petitioner does not have any ongoing out of pocket medical expenses. Therefore, no medical expense deduction was included in Petitioner's FAP budget. The Department conceded that Petitioner submitted one time only medical expenses in December 2020. Petitioner stated that she did receive the maximum FAP benefit amount of \$374 in January 2021.

Petitioner did not have any ongoing out of pocket medical expenses. Additionally, Petitioner already received the maximum FAP benefit amount in January 2021 due to the COVID-19 supplement. Therefore, the Department's failure to include the one time only medical expenses submitted in December 2020 was a harmless error.

In calculating the excess shelter deduction of \$491, the Department stated that it considered Petitioner's verified housing expense of \$796.16 and that she was responsible for a monthly heating expense, entitling her to the heat/utility standard of

\$537. BEM 554, pp. 14-15. The Department testified when calculating Petitioner's excess shelter amount, they added the total shelter amount and subtracted 50% of the adjusted gross income. Petitioner's excess shelter deduction was properly calculated at \$491 per month.

The FAP benefit group's net income is determined by taking the group's adjusted gross income and subtracting the allowable excess shelter expense. After subtracting the allowable deductions, the Department properly determined Petitioner's adjusted gross income to be \$1,685. Petitioner's adjusted gross income subtracted by the \$491 excess shelter deduction results in a net income of \$1,194. A chart listed in RFT 260 is used to determine the proper FAP benefit issuance based on the net income and group size. Based on Petitioner's net income and group size, Petitioner's FAP benefit issuance is \$16. Therefore, the Department properly calculated Petitioner's FAP benefit amount.

MA

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

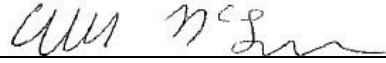
In this case, Petitioner submitted a request for hearing, in part, to dispute the Department's actions related to her MSP benefit case. Shortly after the commencement of the hearing, Petitioner stated her issue regarding her MSP benefit case has been resolved. The Request for Hearing related to Petitioner's MSP benefit case was withdrawn and is hereby **DISMISSED**.

DECISION AND ORDER

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 acted in accordance with Department policy when it determined Petitioner's FAP eligibility. Accordingly, the Department's decision is **AFFIRMED**.

Pursuant to the withdrawal of the hearing request filed in this matter, the request for hearing related to Petitioner's MSP benefit case is **DISMISSED**.

EM/jem



Ellen McLemore
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-Macomb-20-Hearings
BSC4-HearingDecisions
M. Holden
D. Sweeney
MOAHR

Petitioner – Via First-Class Mail:

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