



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 5, 2021
MOAHR Docket No.: 21-000157
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 March 3, 2021. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Tanner Robins, Eligibility Specialist, and Gloria Thompson, Family Independence Manager.

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. In December 2020, Petitioner completed the Redetermination process.
2. On December 10, 2020, the Department issued a Notice of Case Action to Petitioner informing her that her FAP benefit rate was reducing to \$101.00 per month effective January 1, 2021 based upon a group size of one, \$808.00 in Supplemental Security Income (SSI) and State Supplemental Security Income Payment (SSP) benefits, the \$167.00 standard deduction, \$83.33 in housing costs associated with taxes, and \$537.00 for the heat and utility standard deduction (H/U).
3. Petitioner agrees that she receives SSI and SSP, but noted that the amounts are \$794.00 in SSI benefits and a quarterly SSP benefit of \$14.00 per month effective March 1, 2020.

4. Petitioner agrees that she is responsible for her utilities.
5. On January 4, 2021, the Department received Petitioner's request for hearing disputing the Department's reduction of her FAP benefit rate in addition to a copy of a Payment Notice for a loan.

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.

Petitioner has two sources of unearned income, SSI and SSP. Petitioner agrees that her SSI income is \$794.00 per month and it has been ongoing but asserted that her SSP benefit was not effective until March 1, 2021. The Department presented no evidence establishing the effectiveness date of Petitioner's SSP benefit. Therefore, the Department has not met its burden of proof and for purposes of this decision, Petitioner's income is assumed to be \$794.00. Petitioner has no other sources of income; therefore, the total household income is \$794.00 per month.

After consideration of income, the Department considers all appropriate deductions and expenses. 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.
- Medical expenses greater than \$35.00.

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, dependent care, or medical expenses. 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 each item from her gross income. Therefore, Petitioner's AGI is \$627.00.

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). Previously, Petitioner had a housing cost of \$550.00 per month in rent, but at the time of her Redetermination, she no longer had that expense. Instead, she has a property tax expense. Petitioner asserted that the annual property tax expense was \$1,488.86 or \$124.07 per month; however, the Department budgeted \$83.33 per month. The Department did not present any documentation to support its budget amount; therefore, it did not meet its burden of proof. In addition, Petitioner presented a Payment Notice for a loan with her request for hearing, but she never provided it to the Department prior to her request for hearing so it was properly excluded from consideration. In order for an item to be considered by the Department, Petitioner must provide verification of the item. BAM 130 (January 2021). It was not provided before the Department issued the Notice of Case Action.

After the housing expense is considered, 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. Petitioner is responsible for her heat and electric costs, so she is eligible for the H/U of \$537.00. FAP groups that receive the H/U do not receive any other individual utility standards and this was properly budgeted by the Department. *Id.*

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

Since the Department did not meet its burden of proof in establishing Petitioner's income or housing expense, Petitioner's Excess Shelter Deduction and Net Income cannot be properly calculated here. However, if the Department had properly calculated these items, Petitioner's AGI would be divided by two and subtracted from her total shelter costs (taxes

and utilities) to achieve her Excess Shelter Deduction. If the Excess Shelter Deduction is a positive number, it is subtracted from her AGI to achieve her Net Income. Finally, Petitioner's Net Income is compared against the Food Assistance Issuance Tables found in RFT 260 for a monthly 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 as of January 1, 2021.

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-Wayne-17-Hearings
BSC4-HearingDecisions
D. Sweeney
M. Holden
MOAHR

Petitioner- Via USPS:

