



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: May 3, 2021
MOAHR Docket No.: 21-001579
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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 April 28, 2021, from Detroit, Michigan. Petitioner appeared for the hearing and represented himself. The Department of Health and Human Services (Department) was represented by Valerie Foley, Hearing Facilitator.

ISSUE

Did the Department properly calculate the amount of Petitioner's Food Assistance Program (FAP) benefits?

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 is an ongoing recipient of FAP benefits.
2. Petitioner was previously approved for FAP benefits in the amount of \$204 monthly and had a rental expense of \$900.
3. On February 5, 2021, Petitioner submitted a change report to inform the Department that he moved to a new home and had a new address. Petitioner did not include a new rental expense on the change report and did not provide a lease agreement. (Exhibit A, pp. 6-7)
4. The Department processed the reported change in address and removed the previous \$900 rental expense from Petitioner's FAP budget.

5. The Department determined that Petitioner was now eligible for \$76 in FAP benefits monthly, effective March 1, 2021.
6. The Department did not send Petitioner a Notice of Case Action or other eligibility notice informing Petitioner of the reduction in his FAP benefits.
7. On March 17, 2021, Petitioner requested a hearing disputing the Department's actions with respect to his FAP benefits. (Exhibit A, pp. 3-4)

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 requested a hearing to dispute the reduction in his FAP benefits to \$76 effective March 1, 2021. The Department testified that after receiving Petitioner's change report and processing his address change, it removed his prior rental expense of \$900, recalculated his FAP budget for March 2021, ongoing, and determined that he was eligible for \$76 monthly, as Petitioner did not submit a new rental expense. The Department presented a FAP EDG Net Income Results Budget for March 2021 that was thoroughly reviewed to determine if the Department properly concluded that Petitioner's household was eligible for \$76 in monthly FAP benefits. (Exhibit A, pp. 10-11)

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 2020), pp. 1 – 5. The Department considers the gross amount of money earned from Supplemental Security Income (SSI) and State SSI Payments (SSP) in the calculation of unearned income for purposes of FAP budgeting. BEM 503 (January 2021), pp. 35-37. The budget shows that the Department concluded Petitioner had total gross unearned income of [REDACTED] which the Department testified consisted of his monthly SSI benefit of [REDACTED] and a [REDACTED] SSP payment. Petitioner confirmed that these amounts were correct. Therefore, the unearned income was properly calculated.

The deductions to income on the net income budgets were also reviewed. Petitioner's FAP group includes a senior/disabled/veteran (SDV) member. BEM 550 (October

2020), pp. 1-2. Groups with one or more SDV members are eligible for the following deductions to income:

- Dependent care expense.
- Excess shelter.
- Court ordered child support and arrearages paid to non-household members.
- Medical expenses for the SDV member(s) that exceed \$35.
- Standard deduction based on group size.
- An earned income deduction equal to 20% of any earned income.

BEM 554 (January 2021), p. 1; BEM 556 (February 2021), p. 1-8.

In this case, Petitioner's group did not have any earned income, thus, there was no applicable earned income deduction. There was no evidence presented that Petitioner had any out-of-pocket dependent care, medical expenses, or child support expenses; therefore, the budget properly did not include any deduction for dependent care, medical expenses, or child support. The Department properly applied a standard deduction of \$167 which was based on Petitioner's confirmed group size of one. RFT 255 (January 2021), p. 1. With respect to the excess shelter deduction of \$217, the Department properly applied the \$537 heat and utility standard but testified that it did not consider any housing or rental expenses because Petitioner did not identify a rental expense on his change report and did not provide verification of his rental obligation with the change report. Petitioner testified that he is responsible for monthly rent of \$623.37. Petitioner testified that he contacted his case worker to inquire about how to send in proof of his updated rental expense but did not receive a return phone call. The Department testified that it did not send Petitioner a verification checklist (VCL) instructing him to submit proof of his new rental expense because the Department asserted that it was the client's responsibility to submit verification of his rental expense with the change report.

Although Petitioner did not provide verification of his rental obligation with his change report, the Department is to request verification of the housing expenses if questionable. BEM 554 (January 2021). Economic Stability Administration (ESA) Memorandum (Memo) 2020-31 Food Assistance Program Shelter and Utility Expense Self-Attestation also provides the following relevant example of a situation which would be considered questionable and provides:

Example 4: An active FAP recipient reports a change of address through MI Bridges. Previously the client had a rent expense of \$600 but no new shelter expense information was provided with the address change. The specialist first attempts to contact the client by phone, to collect the new shelter expense and other additional information. The specialist is unable to reach the client to discuss the change. Since the information provided is insufficient for case

processing, the expense is considered questionable and a verification should be requested.

Petitioner's situation falls within the guidelines of the above referenced example. There was no evidence that the specialist contacted Petitioner to collect any new information or rental expense and it was established that the Department did not request verification. Therefore, the Department improperly excluded Petitioner's housing expenses from the calculation of the excess shelter deduction.

Additionally, although the Department will be ordered to recalculate Petitioner's FAP budget and take into consideration his monthly obligation for rent, it is noted that a review of the FAP budget shows that the Department calculated Petitioner's benefits by taking 30% of his net income and subtracting that amount from the maximum FAP benefits his group is eligible to receive (\$204) to conclude that he was eligible for \$76. While this calculation is correct in certain cases, this policy and benefit calculation does not apply to group sizes of 1 or 2. Instead, the Department is to rely on RFT 260 to determine a client's FAP benefit amount. See BEM 556, pp. 1-8.

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 benefits for the month of March 2021, 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. Recalculate Petitioner's FAP budget for March 1, 2021, ongoing to include his responsibility for monthly rent and using RFT 260 to determine his FAP benefit allotment;
2. Issue FAP supplements to Petitioner from March 1, 2021, ongoing, for any FAP benefits he was eligible to receive but did not, in accordance with Department policy; and

3. Notify Petitioner in writing of its decision.

ZB/jem



Zainab A. Baydoun
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-19-Hearings
BSC4-HearingDecisions
M. Holden
D. Sweeney
MOAHR

Petitioner – Via First-Class Mail:

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