



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR



Date Mailed: June 18, 2021
MOAHR Docket No.: 21-002230
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 June 3, 2021. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Alison Peck, Eligibility Specialist/Assistance Payments Worker.

ISSUE

Did the Department properly calculate Petitioner's FAP benefit rate effective February 2021, ongoing?

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 February 2, 2021, the Department issued a Notice of Case Action to Petitioner informing her that her FAP benefit rate was \$60.00 effective February 2021 through December 2022 based upon a group size of one with \$783.00 in unearned income, a \$167.00 Standard Deduction, \$177.00 in Housing Costs, the \$141.00 Non-Heat Electric Standard Deduction, as well as the \$29.00 Telephone Standard Deduction.
2. On [REDACTED] Petitioner reported an increase in her income Social Security Administration (SSA) disability benefit to \$783.00 per month.
3. On the same day, the Department issued another Notice of Case Action to Petitioner informing her that her FAP benefit rate was decreasing to \$30.00 per month effective April 1, 2021 through December 2022 based upon a group size of

one with \$783.00 in unearned income, the \$167.00 Standard Deduction, \$177.00 in housing costs, the \$141.00 Non-Heat Electric Standard Deduction, as well as the \$29.00 Telephone Standard Deduction.

4. In February 2021, the Department issued an initial \$60.00 benefit payment on February 2, 2021 and two supplements on February 26, 2021 totaling \$174.00.
5. In March 2021, the Department issued an initial \$60.00 benefit payment on March 19, 2021, and two supplements on March 26, 2021 totaling \$174.00.
6. On [REDACTED] 2021, Petitioner reported a change in her circumstances that she was now required to pay her cooling costs.
7. On the same day, the Department issued a Notice of Case Action to Petitioner informing her that effective April 1, 2021, Petitioner's FAP benefit rate increased to \$141.00 per month based upon a group size of one with \$783.00 in unearned income, the \$167.00 Standard Deduction, \$177.00 in Housing Costs, and the \$537.00 heat and utility standard deduction (H/U) and that a supplement of \$111.00 would be issued to her on April 12, 2021.
8. In April 2021, the Department issued an initial benefit of \$30.00 on April 19, 2021 but issued a supplement to Petitioner of \$111.00 based upon her reported change on [REDACTED] 2021 in addition to a \$30.00 supplement on the same day and two other supplements on April 30, 2021 totaling \$63.00; the Department was unable to identify the reason for each supplement.
9. On April 29, 2021, the Department received Petitioner's verbal request for hearing disputing her FAP benefit rate effective February 2021, ongoing.

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. 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 receives a gross SSA disability benefit of \$783.00 per month. Per policy, the Department must consider the gross income in determining FAP eligibility. BEM 500, p. 2; BEM 505, p. 3-4, 7; BEM 503 (January 2021), p. 29. This was the only source of income and is received on a monthly basis so there is no need to further standardize the income. Therefore, the Department correctly budgeted \$783.00 in unearned income per month on each budget from February 2021, ongoing.

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 (February 2021), pp. 3-6.

No evidence was presented that Petitioner has any child support or dependent care expenses. Petitioner does not have any verified medical expenses. Policy provides as of January 2021 that an SDV group that has a verified one-time or ongoing medical expense or expenses of more than \$35.00 for an SDV person will receive the Standard Medical Deduction (SMD) of \$165.00. BEM 554, p. 9. If the group has actual medical expenses which are more than the SMD, the client has the option to verify the actual expense instead of receiving the SMD. If the verified expense minus \$35.00 is greater than the SMD, the client will receive the verified expense minus \$35.00. *Id.* Finally, 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 \$616.00.

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). Petitioner has a housing expense of \$177.00 per month. The Department properly budgeted this expense. In addition to the housing expense, the Department considers a client's utility expenses. Petitioner did not report that she was responsible for the heating and cooling costs of her home until [REDACTED] 2021. 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 (January 2021), p. 16. When a client is not responsible for heating and/or cooling costs, the client may receive utility standard deductions for non-heat electric, water and/or sewer, telephone, cooking fuel, and trash. BEM 554, p. 22-25. Therefore, Petitioner is eligible for the H/U of \$537.00 in April 2021, but prior to that, she is eligible for any other utility standard deductions. RFT 255 (January 2021), p. 1. The Department properly budgeted the Non-Heat Electric Standard Deduction (\$141.00) and the Telephone Standard Deduction (\$29.00) for February and March 2021, but then modified Petitioner's budget in April 2021 to reflect the H/U (\$537.00) instead. *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 for February and March 2021 was \$347.00 which is reduced by 50% of Petitioner's AGI (\$308.00) resulting in an Excess Shelter Deduction of \$39.00 for February and March 2021. *Id.* Petitioner's total housing cost for April 2021, ongoing, was \$714.00 which is reduced by 50% of Petitioner's AGI (\$308.00) resulting in an Excess Shelter Deduction of \$406.00 for April 2021, ongoing. *Id.*

Next Petitioner's excess shelter deduction is subtracted from her AGI to determine her Net Income of \$577.00 for February and March 2021 and \$210.00 for April 2021, ongoing. *Id.* Finally, Petitioner's Net Income is compared against the Food Assistance Issuance Tables found in RFT 260 for a monthly FAP benefit rate of \$60.00 per month for February and March 2021 and \$171.00 per month for April 2021, ongoing. BEM 556, p. 6; RFT 260 (January, 2021), pp. 4, 9.

In both February and March 2021, the Department properly issued Petitioner \$60.00 as her initial benefit rate and this was also noted on the February 2, 2021 Notice of Case Action.

In April 2021, the Department issued an initial \$30.00 benefit in conjunction with the February 16, 2021 Notice of Case Action, and then a \$111.00 supplement in conjunction with Petitioner's reported change and the notation on the Notice of Case Action on [REDACTED] 2021. The combined benefit is \$141.00 as listed on the April 12, 2021 Notice of Case Action. It is notable that an additional \$30.00 supplement was issued the same day as the \$111.00 supplement which would bring Petitioner's monthly FAP allotment to \$171.00 as calculated above and the remaining supplements would be pursuant to COVID-19 policy. However, since the Notice of Case Action from [REDACTED] 2021 does not reflect the same issuance rate as what has been calculated here and as

noted by RFT 260, the Department has not shown that Petitioner's FAP benefit rate was correct for April 2021 ongoing.

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 for Petitioner's February and March 2021 FAP calculation and benefit issuance, but did not act in accordance with Department policy when it determined Petitioner's FAP benefit rate effective April 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. Correct Petitioner's FAP benefit rate in accordance with RFT 260 (May 2021);
2. Issue supplements to Petitioner for benefits not previously received; and,
3. Notify Petitioner in writing of her corrected FAP benefit rate.

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-DistrictII-Hearings
BSC4-HearingDecisions
D. Sweeney
M. Holden
MOAHR

Petitioner- Via USPS:

