



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: October 25, 2021
MOAHR Docket No.: 21-004386
Agency No.: ██████████
Petitioner: ██████████

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 October 20, 2021. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Candice Bennis, Hearings Facilitator.

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. As of July 1, 2021, Respondent had been receiving \$234.00 in FAP benefits per month based upon ██████████ income and \$0.00 expenses.
2. On July 22, 2021, the Department received Respondent's completed mid-certification contact notice; Petitioner did not list any changes in circumstances.
3. As part of his review of eligibility, the Department examined a State Online Query (SOLQ), an interface with the Social Security Administration accessible by the Department to aid it in determining a client's Social Security Benefit and Medicare participation, which showed that Respondent was receiving Medicare Part A and B but not eligible for the state buy-in, in addition to ██████████ per month in Retirement Survivors Disability Insurance (RSDI) benefits.

4. Effective September 1, 2021, the Department budgeted Petitioner's RSDI income of [REDACTED] per month but did not budget Respondent's Medicare Part A or B premium resulting in a FAP benefit rate of \$19.00 per month.
5. On September 17, 2021, the Department received Respondent's verbal request for hearing disputing the reduction in his FAP benefits to \$19.00 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 his 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 group. 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 (July 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. 4-9. A standard monthly amount must be determined for each income source used in the budget. BEM 505, pp. 8-9. Respondent receives a monthly RSDI check of [REDACTED] therefore, there is no need to further standardize his income.

No other evidence was presented indicating that Petitioner had other sources of income. Therefore, Petitioner's total gross income is [REDACTED].

After consideration of income, the Department considers all appropriate deductions and expenses. Since Petitioner is a recipient of RSDI and Medicare, he is considered a Senior, Disabled, or disabled Veteran (SDV) and is therefore eligible for the following deductions to income:

- Dependent care expense.
- Medical expense deduction
- 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 (July 2021), p. 1; BEM 556 (February 2021), pp. 3-6.

The only expense deduction budgeted by the Department was the standard deduction of \$167.00. RFT 255 (January 2021), p. 1; BEM 556, p. 4. However, as noted by the SOLQ, Petitioner is responsible for his Medicare Part A and Part B premiums. Since the Department was aware of Petitioner's responsibility to pay for the Medicare premiums, the Department improperly failed to budget the expense. Despite the Department's error, this decision will continue to evaluate the budget as presented by the Department for purposes of thoroughness.

After consideration of each of these deductions, Petitioner's Adjusted Gross Income (AGI) would be calculated by subtracting each item from the gross income. Without the cost of the Medicare premiums, the AGI cannot be calculated.

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). The Department did not budget any housing costs or utility expenses for Petitioner because they had not been verified. According to Petitioner, he had provided his previous case worker with verification of his housing expenses, but Petitioner's statement is not supported by the evidence presented as Petitioner's FAP benefit rate was previously calculated in July 2021 with \$0.00 expenses. Therefore, since the Department had not received any verifications, the Department properly budgeted \$0.00 for each housing expense. If Petitioner has any of the following expenses and submits documentation to the Department verifying the expense, they may be considered in his FAP budget calculations going forward from the date of his verification. Expenses include: rent, mortgage, home equity loans, lot rent, property taxes, home owner's insurance for the structure. BEM 554, p. 14-16. If Petitioner is responsible for any of these items, the Department should budget the heat and utility standard deduction (H/U) without requiring additional verification his H/U unless questionable. BEM 554, p. 16. The H/U covers all heat and utility costs including cooling except actual utility expenses (repairs or maintenance). BEM 554, 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 as applicable. BEM 554, p. 22-25. The expenses and factors outlined here are the only expenses considered for purposes of calculating the FAP budget and determining eligibility. After each item is considered, Petitioner's total housing cost is added together and reduced by 50% of Petitioner's AGI to calculate an excess shelter cost. *Id.*

Next, Petitioner's excess shelter cost is subtracted from the AGI to determine the Net Income. *Id.* Finally, Petitioner's Net Income is compared against the Food Assistance Issuance Tables found in RFT 260 for a monthly FAP benefit rate. BEM 556, p. 6; RFT 260 (May 2021).

Since the Department failed to consider Petitioner's Medicare premiums which it was aware of, 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 failed to satisfy its burden of proof that it acted in accordance with Department policy when it determined 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 September 1, 2021 with consideration of his Medicare premiums;
2. If otherwise eligible, issue supplements to Petitioner for benefits not previously received; and,
3. Notify Petitioner in writing of its decision.

AM/ml



Amanda M. T. Marler
Administrative Law Judge

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-41-Hearings
BSC4
M. Holden
D. Sweeney
MOAHR

Petitioner – Via USPS:

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