



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: February 25, 2022
MOAHR Docket No.: 21-005975
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 conference hearing was held on February 23, 2022. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Cornelius Bellomy, Assistance Payment Worker.

ISSUE

Did the Department properly deny Petitioner's State Emergency Relief (SER) application for assistance with water and utility expenses?

Did the Department properly close Petitioner's Food Assistance Program (FAP) case?

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 recipient of FAP benefits.
2. On ██████████ 2021, Petitioner applied for SER assistance with outstanding water and utilities expenses totaling \$1,016.13 (Exhibit A, pp. 9-21, 19)
3. Petitioner identified herself as her only household member in the application (Exhibit A, p. 2).
4. In December 2021, Petitioner received the following income: \$1,272.50 in monthly Retirement Survivors and Disability Income (RSDI) (Exhibit A, p. 23) and \$1168 in

monthly pension income. Her RSDI income increased to \$1,347.10 effective January 2022 (Exhibit A, p. 23).

5. Petitioner's adult son (Son) lives with Petitioner.
6. Son shares custody of his minor child (Grandson) with his ex-wife. Son's ex-wife is the payee of Grandson's Supplemental Security Income (SSI).
7. In December 2021, Son received monthly RSDI income of \$721. His RSDI income increased to \$763 effective January 2022. (Exhibit A, p. 26.)
8. On December 3, 2021, the Department sent Petitioner a State Emergency Relief Decision Notice (SER Decision Notice) informing her that her SER request was denied because her countable income was higher than the maximum amount allowed for the program (Exhibit B).
9. On December 4, 2021, the Department sent Petitioner a Notice of Case Action informing her that her FAP case would close effective January 1, 2022 because her net income exceeded the limit (Exhibit C).
10. On December 13, 2021, the Department received Petitioner's hearing request disputing the denial of her SER assistance request (Exhibit A, pp. 3-5).
11. On December 16, 2021, the Department received Petitioner's hearing request disputing the closure of her FAP case. (Exhibit A, pp. 6-8).

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).

Petitioner requested a hearing disputing the denial of her application for SER assistance with water and utilities and the closure of her FAP case.

SER Application

The State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by the Department (formerly known as the Department of Human Services) pursuant to MCL 400.10 and Mich Admin Code, R 400.7001-.7049.

Petitioner applied for SER for assistance with her outstanding water bill. Department policy provides that SER assistance is available to restore or prevent shut off of utility services (water, sewer, or cooking gas) as follows: payment up to \$350 per fiscal year to maintain or restore service for water services; up to \$175 per fiscal year for

maintaining or restoring cooking gas; and \$200 for fees or deposits to connect, reconnect, or hook up water, sewer, or cooking fuel services. ERM 302 (October 2021), p. 1.

The Department denied Petitioner's SER application for assistance with water/sewer services because her countable income was higher than the maximum amount allowed for the program (Exhibit B). There are no income copayments for SER water/sewer services. ERM 208 (October 2021), p. 1. With respect to income, clients are either eligible or they are not. *Id.* For a group to be eligible for water/sewer services, the combined monthly net income that is received or expected to be received by all SER group members in the 30-day countable income period cannot exceed the standard for water/sewer services for the number of group members. *Id.* If the income exceeds the limit, the request must be denied. *Id.*

The first day of the countable income period for calculating the income received by the SER group is the date the local office receives a signed application for SER. ERM 206 (November 2019), p. 1. In this case, the 30-day countable period began on December 1, 2021, the date the Department received Petitioner's SER application, and ran through December 31, 2021.

All non-excluded gross income the SER group expects to receive during the countable income period is budgeted in determining the household's income for SER purposes. ERM 206, p. 1. Adults and dependent children who normally live together are in the same SER group. ERM 201 (October 2020), p. 1. Visitors in the home who do not normally live with the SER group are excluded from the SR group. ERM 201, pp. 1-2. The SER income limit for water/sewer services is \$2,178 for a 2-person SER group and \$2,745 for a 3-person SER group. ERM 208, p. 6.

The evidence at the hearing showed that, during the countable income period, Petitioner received monthly RSDI income of \$1,272.50 and pension income of \$1,168.00, for a total of \$2,440.50 (Exhibit A, p. 3). Petitioner confirmed that Son lived with her and the Single Online Query (SOLQ), the database available to the Department to access clients' Social Security benefit information, showed that during the SER countable period, Son had monthly RSDI income of \$721 (Exhibit A, p. 26). Petitioner and Son's combined household income totaled \$3,161.50.

At the hearing, the Department testified that Grandson received Supplemental Security Income (SSI) and presented a SER-Copayment Details budget that included Petitioner's RSDI and pension income and Grandson's SSI income but not Son's RSDI. Petitioner explained that Son shared custody of Grandson with his ex-wife and the ex-wife was the payee of Grandson's SSI income. Even if Grandson was included in Petitioner's SER group, increasing the SER group size to three, and his SSI income was excluded from the group's countable income, the sum of Petitioner and Son's income of \$3,161.50 during the SER countable period exceeded the \$2,745 SER income limit for water/sewer services for a three-person SER household. Therefore, even without Grandson's income, Petitioner's household had excess income for SER assistance with

water/sewer services. Thus, the Department acted in accordance with Department policy when it denied Petitioner's SER application for assistance with water/sewer services.

FAP Case

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.

The Department closed Petitioner's FAP case effective January 1, 2022, finding that her net income of \$1,802 exceeded the net income limit (Exhibit C). The Department testified that Petitioner's FAP group consisted only of herself. For a one-person FAP group, the net limit identified in RFT 250 (October 2021), p. 1 is not applied; rather, the issuance table in RFT 260 must be consulted. BEM 556 (October 2021), p. 6. For a one-person FAP group, net income of \$1,773 or less results in FAP eligibility. RFT 260 (October 2021), p. 25.

In determining net income, the Department takes the FAP group's gross income and reduces it by applicable deductions available under Department policy. BEM 556, pp. 1-7. Because Petitioner receives RSDI based on a disability (Exhibit A, p. 23), she is a senior/disabled/disabled veteran (SDV) member of her FAP group. BEM 550 (October 2020), p. 1. FAP groups with SDV members are eligible for deductions to gross income for the following: expenses incurred for dependent care and child support, medical expenses, excess shelter, and a standard deduction based on group size. BEM 554 (July 2021), p. 1.

The following figures, as shown on the FAP budget in the December 4, 2021 Notice of Case Action, were used in calculating Petitioner's FAP budget: \$2516 in unearned income, \$177 for a standard deduction, \$165 in medical expenses, \$900 in housing costs, and \$559 in heat/utility standard (Exhibit A, p. 2). Effective January 1, 2022, Petitioner received monthly RSDI income of \$1,347.10 as well as monthly pension payments of \$1168, for gross income totaling \$2,515.10. Therefore, the unearned income showing on the FAP budget in the Notice of Case Action is off by \$1.

Based on her single-person FAP group, Petitioner is eligible for a \$177 standard deduction to income. RFT 255, p. 1. The budget properly reflected this deduction. There was no evidence presented at the hearing that the household had child care or child support expenses, consistent with the information on the budget on the Notice of Case Action showing no deduction for such expenses.

The excess shelter deduction is based on monthly housing expenses and applicable utility standard. BEM 554, pp. 5-6. Petitioner verified on the record that she paid \$900 in monthly rent. The \$559 heat/utility standard that the Department budgeted is the most

advantageous utility expense available to clients (unless the clients have actual expenses for utility installation charges, water well installation and maintenance, or septic installation and maintenance). BEM 554 (July 2021), pp. 16-25; RFT 255 (October 2021), p. 1.

A medical expense deduction (SMD) of \$165 is available to SDV members that verify a one-time or ongoing monthly medical expense of more than \$35; if the group has verified actual monthly medical expenses in excess of \$200, the group receives a medical deduction in the amount of the verified actual medical expenses minus \$35. BEM 554 (April 2021), pp. 1, 9.

The evidence showed that, as of January 2022, Petitioner paid \$170 in monthly Medicare Part B premiums. This expense alone would allow her the \$165 SMD, which is what the FAP budget shows as the medical deduction. However, Petitioner testified that prior to her case closure, she had submitted additional medical expenses to the Department. The Department did not provide any evidence showing the amounts, if any, that had been previously budgeted for the medical expense deductions and whether there were verified medical expenses that should have continued to have been budgeted in the January 2022 ongoing budget that would have resulted in a medical deduction in excess of the \$165 SMD. A higher medical deduction would affect the calculation of Petitioner's net income and, consequently, her FAP eligibility. Therefore, the Department has failed to satisfy its burden of showing that it calculated Petitioner's FAP eligibility in accordance with Department policy.

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 policies when it denied Petitioner's SER application due to excess income but failed to satisfy its burden of showing that it acted in accordance with Department policy when it closed her FAP case.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to denial of Petitioner's SER application and **REVERSED IN PART** with respect to closure of Petitioner's FAP case.

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. Reinstate and reprocess Petitioner's FAP case effective January 1, 2022;
2. If eligible, issue supplements to Petitioner for FAP benefits she was eligible to receive from January 1, 2022 ongoing; and
3. Notify Petitioner in writing of its decision.

ACE/mp



Alice C. Elkin
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

Email Recipients:

MDHHS-Wayne-57-Hearings
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