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GOVERNOR

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

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DIRECTOR

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Date Mailed: April 7, 2022
MOAHR Docket No.: 22-000245
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Linda Jordan

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 hearing was held on March 31, 2022 via teleconference. Petitioner appeared and represented herself. Robin Van Wormer, Eligibility Specialist, and Sara Terreros, Assistance Payments Supervisor, represented the Michigan Department of Health and Human Services (MDHHS or Department).

ISSUE

Did MDHHS properly decrease Petitioner's Food Assistance Program (FAP) benefit amount?

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 at a rate of \$██████████ per month (Exhibit A, p. 16).
2. On January 11, 2022, MDHHS completed Petitioner's Mid-Certification Review and sent Petitioner a Notice of Case Action indicating that she was approved for FAP at a rate of \$██████████ per month, effective February 1, 2022 to January 31, 2023 (Exhibit A, p. 11). The FAP benefit rate was based on \$██████████ in unearned income (Exhibit A, p. 12).
3. On ██████████, 2022, Petitioner requested a hearing regarding the decrease in her FAP benefit rate (Exhibit A, p. 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. MDHHS 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 challenge the reduction in her FAP benefit rate. MDHHS processed Petitioner's Mid-Certification Review and determined that she was eligible for \$[REDACTED] per month in FAP benefits, which was less than she was previously receiving.

However, due to the COVID-19 pandemic, the federal government authorized the State of Michigan to issue Emergency Allotments (EA) to all FAP households, meaning that FAP households not receiving the maximum benefit for their group size will receive a supplement to bring their benefit amount to the maximum amount allowed for their group size. ESA Memo 2022-22 (January 2022). If the supplement does not equal or exceed \$95.00, the group will receive additional benefits up to \$95.00, even if this causes them to exceed the maximum benefit amount for the group size. *Id.* While the EA are in effect, Petitioner's FAP benefit amount is the maximum for a household size of one, which was \$[REDACTED] per month as of October 1, 2021. *Id.*; RFT 260 (October 2021), p. 1. When the EA are no longer in effect, Petitioner will receive her regular benefit amount, which MDHHS determined was \$[REDACTED] per month.

At the hearing, MDHHS stated that the reduction in benefits was caused by the Cost of Living Adjustment (COLA) to Petitioner's Retirement, Survivors and Disability Insurance (RSDI) income. Due to COLA, Petitioner's RSDI increased from \$[REDACTED] per month to \$[REDACTED] per month in January 2022. Petitioner did not dispute this amount but objected to the fairness of including COLA in the FAP budget when doing so leads to a reduction in FAP benefits. Petitioner asserting that as a disabled individual, she was a member of a protected class, and the reduction in FAP benefits because of COLA is discrimination against persons with disabilities. Petitioner was advised at the hearing that questions concerning the discriminatory nature of the policy were outside the scope of the administrative proceeding and that the issue before the undersigned Administrative Law Judge was whether or not MDHHS properly determined her FAP benefit rate, pursuant to department policy.

To determine whether MDHHS properly calculated Petitioner's FAP benefit amount, all countable earned and unearned income available to the client must be considered. BEM 500 (July 2020), pp. 1-5. For RSDI income, MDHHS counts the gross benefit

amount as unearned income. BEM 503 (April 2021), pp. 29. MDHHS budgeted \$ [REDACTED] for Petitioner's unearned income based on her receipt of RSDI. No evidence was presented that Petitioner had any other income. Therefore, Petitioner's countable income was her gross monthly RSDI income, which equaled \$ [REDACTED]

After income is calculated, MDHHS must determine applicable deductions. Because Petitioner is disabled, her FAP group is considered a Senior/Disabled/Disabled Veteran (SDV) group. BEM 550 (January 2022), p. 1. SDV groups are eligible for the following deductions.

- Earned income deduction
- Dependent care expense
- Court-ordered child support and arrearages paid to non-household members
- Standard deduction based on group size
- Medical expenses for SDV members that exceed \$35
- Excess shelter up to the maximum in RFT 255

BEM 550, p. 1; BEM 554 (January 2022), p. 1; BEM 556 (October 2021), p. 3.

No evidence was presented that Petitioner had earned income, dependent care expenses or court-ordered child support. MDHHS budgeted the standard deduction based on a group-size of one, which was \$ [REDACTED]. RFT 255 (October 2021), p. 1. Petitioner is also entitled to deductions for verifiable medical expenses that the SDV member incurs in excess of \$ [REDACTED]. BEM 554, p. 1. No evidence was presented that Petitioner had verified medical expenses.

The above deductions were subtracted from Petitioner's monthly income of \$ [REDACTED] to determine Petitioner's Adjusted Gross Income (AGI). The record shows that MDHHS properly determined that Petitioner's AGI was \$ [REDACTED].

Next, MDHHS determined the excess shelter deduction. In calculating the excess shelter deduction of \$ [REDACTED], MDHHS stated that it considered Petitioner's verified housing expenses of \$ [REDACTED] and that she was responsible for paying monthly utilities, which entitled her to the heat/utility standard of \$ [REDACTED] BEM 554, pp. 14-15. MDHHS determined Petitioner's total shelter amount by adding together her verified housing expense of \$ [REDACTED] and the heat/utility standard of \$ [REDACTED] which equaled \$ [REDACTED]. To determine the excess shelter deduction, 50% of the AGI is subtracted from the total shelter amount. Subtracting 50% of Petitioner's AGI, or \$ [REDACTED] (rounding down), from Petitioner's total shelter amount of \$ [REDACTED] equals \$ [REDACTED]. Therefore, MDHHS properly determined that Petitioner's excess shelter deduction was \$ [REDACTED].

Finally, to determine Petitioner's net income for FAP, MDHHS subtracted the excess shelter deduction of \$[REDACTED] from Petitioner's AGI of \$[REDACTED], which equals \$[REDACTED]. An individual with a net income of \$[REDACTED] and a FAP group of one is entitled to receive \$[REDACTED] per month in FAP benefits. RFT 260 (October 2021), p. 3.

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 MDHHS acted in accordance with Department policy when it calculated Petitioner's FAP benefit rate.

DECISION AND ORDER

Accordingly, MDHHS' decision is **AFFIRMED**.



Linda Jordan
Administrative Law Judge

LJ/tm

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-Kent-1-Hearings
M. Holden
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