



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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██████████, MI ██████████

Date Mailed: April 1, 2022
MOAHR Docket No.: 22-000511
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 via teleconference on March 28, 2022. Petitioner appeared and represented herself. Valarie Foley, Hearings Facilitator, appeared on behalf of the Michigan Department of Health and Human Services (MDHHS or Department).

ISSUE

Did MDHHS properly decrease Petitioner's 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.
2. On ██████████, 2021, Petitioner submitted a FAP Redetermination to MDHHS and reported that she lived at an address on ██████████ in ██████████, Michigan (██████████ Address) (Exhibit A, pp. 4-7).
3. MDHHS processed Petitioner's FAP Redetermination and updated her address. Prior to the Redetermination, Petitioner was living at an apartment on ██████████ in ██████████ Michigan (██████████ Address) (Exhibit A, p. 1).
4. On January 15, 2022, MDHHS sent Petitioner a Notice of Case Action indicating that she had been approved for FAP for a household of one at a benefit rate of \$██████████ per month, effective February 1, 2022 (Exhibit A, pp. 9-12). The FAP

benefit rate was based on no housing costs and was a decrease from her previous benefit rate (Exhibit A, p. 10).

5. On [REDACTED] 2022, Petitioner requested a hearing to challenge the decrease in her FAP benefit amount (Exhibit A, p. 3).

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, MDHHS decreased Petitioner's FAP Benefit rate when it processed her FAP Redetermination because it discovered that Petitioner was no longer living at the [REDACTED] Address. MDHHS testified that because Petitioner was no longer living there, she was not entitled to a deduction related to the housing expenses associated with that apartment. MDHHS removed the housing expenses from the [REDACTED] Address from Petitioner's FAP budget, which caused a reduction in Petitioner's FAP benefit rate.

At the hearing, Petitioner testified that she has been living at the [REDACTED] Address with her daughter since August 2021, but that she still pays for the apartment at the [REDACTED] Address. Petitioner reported that she is no longer staying overnight at her old apartment due to an insect infestation, which she is working with the landlord to address. Petitioner stated that she still keeps her belongings at [REDACTED] Address and occasionally spends a few hours there, but that she sleeps at the [REDACTED] Address.

To determine whether MDHHS properly calculated Petitioner's FAP benefit amount, the analysis starts by considering all countable earned and unearned income available to the client. BEM 500 (July 2020), pp. 1-5. For Retirement, Survivors, Disability Insurance (RSDI) income, MDHHS counts the gross benefit amount as unearned income. BEM 503 (April 2021), p. 28. Here, MDHHS budgeted \$[REDACTED] in unearned income, which represented Petitioner's RSDI payments. Petitioner did not dispute this amount and there was no other evidence of earned or unearned income. Thus, Petitioner's countable income was [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.

There was no evidence of 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. There was no evidence of ongoing medical expenses exceeding \$35.00. BEM 554, p. 1. The above deductions were subtracted from Petitioner's monthly income of \$[REDACTED], which represents Petitioner's Adjusted Gross Income (AGI). Based on these amounts, MDHHS determined that Petitioner's AGI was \$[REDACTED].

Next, MDHHS is required to determine the excess shelter deduction. In calculating the excess shelter deduction of \$[REDACTED] MDHHS budgeted \$0 in shelter expense and the heat and utility standard of \$[REDACTED]. BEM 554, pp. 14-15. Petitioner argued that she should be entitled to a deduction based on verified housing expenses because she still pays for her apartment at the [REDACTED] Address. MDHHS stated that it could not consider those expenses, because by Petitioner's own account, she no longer lives at the [REDACTED] Address.

Pursuant to BEM 554, housing expenses include rent, mortgage, a second mortgage, home equity loan, required condo and maintenance fees, lot rental or other payments including interest leading to ownership of the shelter occupied by the FAP group. BEM 554, p. 14. MDHHS allows shelter expenses when the FAP group has a shelter expense or contributes to the shelter expenses. BEM 554, p. 13.

MDHHS is required to allow shelter costs for homes temporarily unoccupied by the FAP group due to employment or training away from home, illness, abandonment caused by a natural disaster or casualty loss. BEM 554, p. 26. MDHHS must consider shelter costs for a temporarily unoccupied home, provided that the FAP group intends to return to the home, the current occupants of the home (if any) are not claiming shelter costs on that home for the purposes of FAP, and the home is not being leased or rented to others during the FAP group's absence. *Id.*

In this case, Petitioner testified that she left the home due to an insect infestation, that she has been working with the landlord to resolve it, and that she has been living with her daughter temporarily. Petitioner maintained that she intends to return to the [REDACTED]

█████ Address as soon as the issue is resolved, and that returning to her apartment is important to her because this particular apartment fits her needs as a disabled individual. Petitioner stated that she is still paying rent for the ██████ Address.

Provided that the expenses were properly verified, MDHHS should have included the rental expenses for the ██████ Address as shelter expenses in the FAP budget because Petitioner intends to return to the home, and there was no evidence that the home was being occupied by someone else or that the home was being leased or rented to others during her absence. See BEM 554, pp. 16, 26.

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 MDHHS did not act in accordance with Department policy when it decreased Petitioner's FAP benefit rate.

DECISION AND ORDER

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

MDHHS 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 the FAP budget for February 1, 2022 ongoing, including applicable and verified rental expenses for the ██████ Address;
2. If Petitioner is eligible for supplements, issue supplements to Petitioner for any FAP benefits she was eligible to receive but did not from February 1, 2022 ongoing; and
3. Notify Petitioner of its decision in writing.

LJ/tm



Linda Jordan
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-19-Hearings
M. Holden
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MOAHR

First-Class Mail Recipient:

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