



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

██████████
██
██████████ MI ██████████

Date Mailed: October 31, 2022
MOAHR Docket No.: 22-004356
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Danielle Nuccio

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 24, 2022. The Petitioner appeared and represented himself. The Department of Health and Human Services (MDHHS) was represented by Daaimah Harmon, Eligibility Specialist, and Maia Elvine-Fair, Assistant Payments Supervisor.

ISSUE

Did MDHHS properly calculate Petitioner's Food Assistance Program (FAP) budget?

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 ██████████ 2022, Petitioner applied for FAP benefits for a one-person group (Exhibit A, pp. 23-29).
2. On September 20, 2022, MDHHS issued a Notice of Case Action to Petitioner informing him that he is eligible for FAP benefits in the amount of \$11.00 monthly. Beginning October 1, 2022, the monthly benefits increased to \$23.00 (Exhibit A, pp. 6-10).
3. On September 27, 2022, MDHHS received Petitioner's timely submitted hearing request disputing the monthly amount of FAP benefits he is eligible to receive (Exhibit A, pp. 4-5).

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.

Petitioner requested a hearing to dispute the determination of his monthly FAP benefits. Subsequent to Petitioner's hearing request, MDHHS received updated information regarding Petitioner's child support payments. MDHHS then updated Petitioner's household budget and determined Petitioner to be eligible for \$223.00 in monthly FAP benefits. A Notice of Case Action was issued on October 3, 2022 advising Petitioner that his FAP monthly benefit amount had increased (see Exhibit A, pp. 16-20).

FAP benefit amounts are determined by a client's net income. BEM 556 outlines the factors and calculations required to determine a client's net income. FAP net income factors group size, countable monthly income, and relevant monthly expenses. MDHHS presented budget documents listing the calculations to determine Petitioner's FAP eligibility. During the hearing, all relevant budget factors were discussed with Petitioner.

In determining Petitioner's FAP eligibility, MDHHS factored a benefit group size of one, with no [REDACTED] (over [REDACTED] years old), disabled or disabled veteran (S/D/V) group members. Petitioner confirmed this was correct.

All countable earned and unearned income available to the client must be considered in determining a client's eligibility for program benefits and group composition policies specify whose income is countable. BEM 500 (April 2022), pp. 1-5. MDHHS determines a client's eligibility for program benefits based on the client's actual income and/or prospective income. In prospecting income, MDHHS 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 (November 2021) pp. 5-6. A standard monthly amount must be determined for each income source used in the budget, which is determined by multiplying average biweekly pay by 2.15 and average weekly pay by 4.3. BEM 505 pp. 8-9. Income received twice per month is added together. BEM 505, pp. 7-9. An employee's wages include salaries, tips, commissions, bonuses, severance pay, and flexible benefit funds not used to purchase insurance. MDHHS counts gross wages in the calculation of earned income. BEM 501 (January 2020), pp. 6-7.

Petitioner argues that he does not receive income, but rather receives compensation for the work he does for Employer. Petitioner argues that he does not have money but that he has currency and currency has not had value since the 1933 Emergency Banking Act. Per policy, earned income means income received from another person or organization or from self-employment for duties that were performed for remuneration or profit. BEM 500, p. 4. Therefore, MDHHS acted in accordance with policy in budgeting the money that Petitioner receives from employment as earned income.

Petitioner is paid bi-weekly from employment. In calculating the amount of earned income that Petitioner receives monthly, MDHHS relied upon paystubs from pay periods ending August 19, 2022 and September 2, 2022 (see Exhibit B-1 and Exhibit B-2). The income that Petitioner received during the submitted pay periods, when converted to a standard monthly amount as discussed, totals \$[REDACTED]. Therefore, MDHHS acted in accordance with policy in calculating Petitioner's earned income amount.

Petitioner confirmed that he receives no self-employment income or unearned income. Therefore, MDHHS properly calculated Petitioner's household income.

MDHHS uses certain expenses to determine net income for FAP eligibility and benefit levels. BEM 554 (July 2021) p. 1. For groups without a S/D/V member, such as Petitioner's, MDHHS considers the following expenses: a standard deduction, childcare, court-ordered child support and arrearages paid to non-household members, and a capped excess shelter expense. BEM 554, p. 1.

MDHHS will reduce the gross countable earned income by 20 percent, known as the earned income deduction. BEM 550 (January 2022), p.1. MDHHS correctly determined Petitioner is entitled to an earned income deduction of \$352.00.

The standard deduction is given to all FAP benefit groups, though the amount varies based on the benefit group size. MDHHS used the standard deduction for a group size of one, effective October 1, 2022, of \$193.00. RFT 255 (October 2022), p. 1. Under review is Petitioner's September 2022 budget, meaning this policy was not yet in effect. MDHHS should have used the standard deduction of \$177.00. RFT 255 (September 2022), p. 1. However, since MDHHS used a higher deduction it ultimately benefits Petitioner and will be considered harmless error.

When calculating child support income, MDHHS uses the monthly average of the child support payments received in the past three calendar months, unless changes are expected. BEM 505, p. 4. If there are known changes that will affect the amount of the payments in the future, MDHHS will not use the previous three months. BEM 505, p. 4. If the past three months' child support is not a good indicator of future payments, MDHHS will calculate an expected monthly amount for the benefit month based on available information and discussion with the client. BEM 505, p. 5. MDHHS calculated Petitioner's household budget for September 2022 without including the child support expenses that Petitioner pays. MDHHS testified that they have remedied this error and

calculated \$397.46 in monthly child support expenses, now including that amount in Petitioner's household budget. Petitioner confirmed that this amount is correct.

MDHHS testified that it calculated Petitioner's housing expenses from his report of \$539.00 in rent and responsibility for paying gas and electricity. Petitioner was credited with a standard heating/utility (h/u) credit of \$559.00. RFT 255 (October 2021) p. 1.¹ Generally, the h/u credit covers all utility expenses and is the maximum credit available.² MDHHS only credits FAP benefit groups with an "excess shelter" expense. The excess shelter expense is calculated by subtracting half of the adjusted gross income from the total shelter obligation. In Petitioner's case, this results in \$492.00. This is less than the shelter maximum of \$597.00. MDHHS should have credited Petitioner with an excess shelter expense when calculating his benefit amount. Therefore, MDHHS did not act in accordance with policy in calculating Petitioner's household budget to determine his monthly FAP amount.

While corrections have been made in Petitioner's FAP budget since the appealed September 20, 2022 Notice of Case Action, MDHHS' errors in calculating Petitioner's budget effective September 14, 2022 to September 30, 2022 may entitle Petitioner to supplements. 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 MDHHS did not act in accordance with Department policy when it determined Petitioner to be eligible for \$11.00 in monthly FAP benefits from September 14, 2022 to September 30, 2022.

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. Recalculate the FAP budget for September 14, 2022 ongoing in accordance with Department policy in effect at that time and consistent with this Hearing Decision;
2. If Petitioner is eligible for supplements, issue supplements to Petitioner for any FAP benefits he was eligible to receive but did not from September 14, 2022 ongoing;

¹ Effective October 1, 2022, the heat and utility standard increased to \$620.00, and the shelter maximum increased to \$624.00.

² MDHHS allows additional credits for "actual utility expenses". Such expenses are only allowed for utility installation charges, water well installation and maintenance, and septic installation and maintenance. BEM 554 (October 2019) p. 15. There was no evidence of applicable exceptions.

3. Notify Petitioner of its decision in writing.

DN/mp



Danielle Nuccio
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

