



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
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Date Mailed: March 24, 2023
MOAHR Docket No.: 22-006332
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 March 16, 2023, from Lansing, Michigan. [REDACTED] the Petitioner, appeared on her own behalf. The Department of Health and Human Services (Department) was represented by H. Daniel Beaton, Assistant Attorney General (AAG). Sheila Crittenden, Family Independence Manager (FIM) appeared as a witness for the Department.

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-33.

ISSUE

Did the Department properly determine Petitioner's eligibility for the Food Assistance Program (FAP)?

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 [REDACTED] 2022, Petitioner applied for FAP and reported: income of [REDACTED] from Retirement Survivors Disability Insurance (RSDI) benefits; medical expenses including credit card debt of \$500.00 monthly for surgery and transportation; and housing expenses including property tax and \$100.00 plus per month for maintenance. (Exhibit A, pp. 3-13)

2. During a July 26, 2022 interview, the Department worker understood that Petitioner reported income from RSDI; medical expenses; as well as shelter expenses including property tax and utilities. (Exhibit A, pp. 16-23)
3. On December 3, 2022, an automated Cost of Living Allowance (COLA) update reflected an increase in Petitioner's income from RSDI benefits from [REDACTED] to [REDACTED]. (Exhibit A, pp. 1 and 30-33)
4. On December 3, 2022, a Notice of Case Action was issued to Petitioner stating the FAP benefit would decrease to \$25.00 per month effective January 1, 2023. (Exhibit A, pp. 25-29)
5. On December 13, 2022, Petitioner requested a hearing contesting the amount of her monthly FAP allotment. (Exhibit A, p. 1)

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 calculating the FAP budget, the Department considers unearned income, which includes Social Security Administration (SSA) issued benefits such as RSDI. BEM 503, January 1, 2023, pp. 29-31. The Department counts the gross benefit amount as unearned income. BEM 503, p. 29.

For FAP, a shelter expense is allowed when the FAP group has a shelter expense or contributes to the shelter expense. BEM 554, (October 1, 2022), p. 13. Shelter expenses include property taxes. BEM 554 p. 15. The heat/utility (h/u) standard covers all heat and utility costs including cooling, except actual utility expenses, for example, installation fees etc. FAP groups that qualify for the h/u standard do not receive any other individual utility standards. FAP groups whose heat is included in their rent may still qualify for the h/u standard. Some additional ways include but are not limited to, receipt of the Home Heating Credit (HHC) or a Low Income Home Energy Assistance Payment (LIHEAP). The amount of either payment must be greater than \$20 in the month of application or in the immediately preceding 12 months prior to the application month. BEM 554, p. 16. FAP groups who pay for cooling (including room air

conditioners) are eligible for the h/u standard if, they have the responsibility to pay for non-heat electric. BEM 554 p. 18. FAP groups not eligible for the h/u standard who have other utility expenses or contribute to the cost of other utility expenses are eligible for the individual utility standards. Use the individual standard for each utility the FAP group has responsibility to pay. BEM 554 p. 22. Verified allowable medical expenses can also be considered for senior/disabled/veteran (SDV) FAP group members. BEM 554 pp. 8-13)

In general, verification is to be obtained when: required by policy; required as a local office option; and when information regarding an eligibility factor is unclear, inconsistent, incomplete, or contradictory. Verification is usually required at application and at redetermination as well as for a reported change affecting eligibility or benefit level. The Department must tell the client what verification is required, how to obtain it, and the due date. BAM 130, January 1, 2022, pp. 1-3. For FAP, the Department must allow the client 10 calendar days (or other time limit specified in policy) to provide the verification requested. BAM 130, p. 7.

Housing expenses include rent, mortgage, a second mortgage, home equity loan, required condo or maintenance fees, lot rental or other payments including interest leading to ownership of the shelter occupied by the FAP group. The expense must be a continuing one. BEM 554, October 1, 2022, p. 14. Property taxes, state and local assessments and insurance on the structure are allowable expenses. BEM 554, p. 15. Regarding home repair expenses, the Department can only allow charges for repair of a home which was substantially damaged or destroyed due to a natural disaster such as fire or flood. BEM 554, p. 15.

In this case, the Department redetermined Petitioner's eligibility for FAP due to the COLA increase for Petitioner's RSDI income. The included housing cost was based on the verification of property taxes. The full heat and utility standard was included in the FAP budget. No medical expenses were included in the FAP budget. (Exhibit A, pp. 1, 26, and 30-33; FIM Testimony).

Petitioner described expenses related to repairs and maintenance of the home. (Petitioner Testimony). However, unless there was substantial damage or destruction due to a natural disaster, the BEM 554 policy does not allow for these types of expenses to be included in the FAP budget.

However, the evidence indicates Petitioner had previously reported having medical expenses on the Assistance Application and during the interview. (Exhibit A, pp. 3-13 and 16-23) The FIM testified that no verification checklist had been issued to Petitioner. (FIM Testimony) Accordingly, it appears that the Department has not followed the BAM 130 policy to request verification, in this case to determine whether Petitioner had allowable medical expenses.

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 did not act in accordance with Department policy when it determined Petitioner's eligibility for FAP based on the information available at that time.


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 eligibility for FAP retroactive to the January 1, 2023 due date in accordance with Department policy.

CL/ml



Colleen Lack
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 Electronic Mail :

DHHS

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Interested Parties :

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Via First Class Mail :

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