



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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MI [REDACTED]

Date Mailed: March 30, 2023
MOAHR Docket No.: 23-000959
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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 23, 2023, from Detroit, Michigan. Petitioner appeared for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by Valarie Foley, Hearing Facilitator.

ISSUE

Did the Department properly calculate the amount of Petitioner's Food Assistance Program (FAP) benefits?

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 is an ongoing recipient of FAP benefits. In connection with a redetermination, Petitioner's eligibility to receive FAP benefits was reviewed.
2. Prior to the redetermination, Petitioner was approved for FAP benefits in the monthly amount of around \$218.
3. On the redetermination Petitioner submitted to the Department on January 18, 2023, Petitioner reported that her household size is one, that she receives [REDACTED] in monthly Retirement Survivors Disability Insurance (RSDI)/Social Security Disability (SSD), that her monthly rent is \$310, and that she is responsible for an extra \$100 towards the cost of her air conditioning. (Exhibit A, pp.4 -8)

4. On or around February 14, 2023, the Department sent Petitioner a Notice of Case Action, advising her that effective March 1, 2023, she was approved for FAP benefits in the amount of \$23 monthly. (Exhibit A, pp.16 – 20)
5. On or around February 21, 2023, Petitioner requested a hearing disputing the Department actions with respect to the amount of her FAP benefits.

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.

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148,

In this case, the Department representative testified that after recalculating Petitioner's FAP budget in connection with the redetermination, it determined that Petitioner was eligible for \$23 in monthly FAP benefits. The Department presented a FAP EDG Net Income Results Budget which was thoroughly reviewed to determine if the Department properly calculated Petitioner's FAP benefits. (Exhibit A, p. 9-10, 15).

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. The Department considers the gross amount of money earned from RSDI/SSD in the calculation of unearned income for purposes of FAP budgeting. BEM 503 (January 2023), p. 29-30.

The Department concluded that Petitioner had unearned income in the amount of [REDACTED]. The Department representative testified that it specifically considered Petitioner's monthly RSDI as documented in the SOLQ presented for review. Petitioner confirmed that the unearned income amount was correct. Upon review, the Department properly calculated Petitioner's unearned income.

The deductions to income on the net income budget were also reviewed. Petitioner's FAP group includes a senior/disabled/veteran (SDV) member. BEM 550 (January 2022), pp. 1-2. Petitioner's FAP group is eligible for the following deductions to income:

- Dependent care expense.
- Excess shelter.
- Court ordered child support and arrearages paid to non-household members.
- Standard deduction based on group size.
- Medical expenses for the SDV member(s) that exceed \$35.
- An earned income deduction equal to 20% of any earned income.

BEM 554 (October 2022), p. 1; BEM 556 (January 2023), p. 1-8.

In this case, Petitioner's group did not have any earned income, thus, there was no applicable earned income deduction. There was no evidence presented that Petitioner had any out-of-pocket dependent care, child support or medical expenses. Although Petitioner asserted that she is responsible for monthly prescription costs, Petitioner confirmed that verification of these expenses was not presented to the Department. Therefore, the budget properly did not include any deduction for dependent care, child support or medical expenses. The Department properly applied a standard deduction of \$193 which was based on Petitioner's confirmed group size of one.

With respect to the excess shelter deduction, the Department considered Petitioner's responsibility for monthly rent in the confirmed amount of \$310. Initially, the Department asserted that Petitioner was not eligible for the heat and utility (h/u) standard, as her heating and electricity costs are included in her monthly rent. Therefore, the Department only applied \$30 telephone standard. However, upon review of information presented with Petitioner's redetermination, specifically, a letter from the Livonia Housing Commission, the Department conceded that Petitioner should have received the h/u standard, as she is billed for excess cooling. The h/u standard covers all heat and utility costs including cooling expenses. BEM 554, pp. 13-17. FAP groups that qualify for the h/u standard do not receive any other individual utility standards. BEM 554 provides that FAP groups whose electricity is included in their rent are not eligible for the h/u standard unless their landlord bills them separately for excess cooling. BEM 554, p.21. Thus, the Department failed to properly calculate the excess shelter deduction.

After further review, although the Department properly determined Petitioner's income and took into consideration some appropriate deductions to income, because of the errors identified with respect to the excess shelter deduction, and the Department's failure to include the h/u standard, 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 calculated Petitioner's FAP benefits of \$23 effective March 1, 2023.


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 Petitioner's FAP budget for March 1, 2023, ongoing, taking into consideration her responsibility for excess cooling expenses/the heat and utility standard;
2. Issue FAP supplements to Petitioner for any benefits she was eligible to receive but did not, if any, from March 1, 2023, ongoing, in accordance with Department policy; and
3. Notify Petitioner in writing of its decision.

ZB/ml



Zainab A. Baydoun
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
Susan Noel
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Interested Parties

BSC4
M Holden
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Via First Class Mail :

Petitioner

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