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GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: May 2, 2023
MOAHR Docket No.: 23-001863
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 April 27, 2023 via teleconference. 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 determine Petitioner's Food Assistance Program (FAP) benefit rate?

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 December 2, 2022, MDHHS sent Petitioner a Notice of Case Action indicating that she was approved for FAP benefits at a rate of \$██████ per month, effective December 1, 2022 to November 30, 2024 (Exhibit A, p. 7). MDHHS budgeted \$0.00 for the heat and utility standard (Exhibit A, p. 8).
3. On March 21, 2023, MDHHS sent Petitioner a Shelter Verification, which was returned to MDHHS by Petitioner's landlord on March 30, 2023 (Exhibit A, p. 17). The Shelter Verification indicated that Petitioner rents an apartment, and the costs of heating, water/sewer and trash removal are included in the rent (Exhibit A, p. 18).

4. On March 30, 2023, Petitioner filed a Request for a Hearing to dispute the calculation of her FAP benefit rate (Exhibit A, pp. 3-6).

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 after determining that she was not eligible for the heat and utility standard. Petitioner disputed the calculation of her FAP benefit rate and argued that she was eligible for the heat and utility standard.

To determine whether MDHHS properly calculated Petitioners' FAP benefit amount, all countable earned and unearned income available to the client must be considered. BEM 500 (April 2022), pp. 1-5. MDHHS budgeted \$948.00 for Petitioner's unearned income. Petitioner did not dispute this amount and there was no evidence of other income.

After income is calculated, MDHHS must determine applicable deductions. Petitioner's FAP group is considered a Senior/Disabled/Disabled Veteran (SDV) group. BEM 550 (January 2022), pp. 1-2. 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. 1-2; BEM 554 (October 2022), p. 1; BEM 556 (October 2022), pp. 1-7.

No evidence was presented that Petitioner had earned income, dependent care expenses, court-ordered child support or verified medical expenses. MDHHS budgeted the standard deduction for a household of one, which was \$193.00. RFT 255 (October 2022), p. 1. To calculate Petitioner's Adjusted Gross Income (AGI), the standard deduction of \$193.00 was subtracted from the countable income of \$948.00, which equals \$755.00.

Next, MDHHS is required to determine the excess shelter deduction. In calculating the excess shelter deduction of \$22.00, MDHHS testified that it considered Petitioner's verified housing expenses of \$216.00 in rent and budgeted the non-heat electric standard of \$153.00 and the telephone standard of \$30.00. RFT 255, p. 1.

MDHHS stated that it did not budget the heat and utility standard of \$620.00 and acknowledged that this was an error. BEM 554, pp. 16-21. The heat and utility standard covers all heat and utility costs, including cooling. *Id.*, p. 16. FAP groups that qualify for the heat and utility standard do not receive any other individual utility standards. *Id.* FAP groups whose heat is included in their rent or fees are not eligible for the heat and utility standard, unless they are billed for excess heat payments from their landlord. *Id.*, p. 18. However, FAP groups who pay for cooling (including room air conditioners) are eligible for the heat and utility standard if they have the responsibility to pay for non-heat electric. *Id.*

In this case, it was undisputed that Petitioner's heat was included in her rent. It was also undisputed that she had a room air conditioner and that she paid non-heat electric, which was verified by a DTE Energy bill (Exhibit A, p. 11). Under these circumstances, MDHHS should have budgeted the heat and utility standard for Petitioner and not the non-heat electric standard.

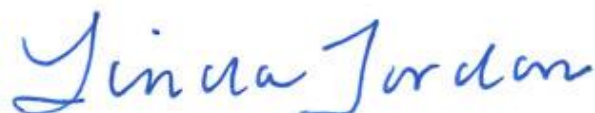
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the MDHHS did not act in accordance with Department policy when it calculated Petitioner's FAP benefit rate.

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 Petitioner's FAP benefit rate after budgeting the heat and utility standard, from December 1, 2022 ongoing;
2. Issue supplements to Petitioner for any FAP benefits that she was entitled to receive, but did not, from December 1, 2022 ongoing; and
3. Notify Petitioner of its decision in writing.



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

Via-Electronic Mail :

DHHS
Susan Noel
Wayne-Inkster-DHHS
26355 Michigan Ave
Inkster, MI 48141
**MDHHS-Wayne-19-
Hearings@michigan.gov**

Interested Parties
M. Holden
D. Sweeney
BSC4

Via-First Class Mail :

Petitioner
[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]