



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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Date Mailed: August 15, 2023
MOAHR Docket No.: 23-004098
Agency No.: ██████████
Petitioner: ██████████

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 August 10, 2023, from Lansing, Michigan. ██████████ the Petitioner, appeared on his own behalf. The Department of Health and Human Services (Department) was represented by Deonna Harris, Assistance Payments Worker (APW) and Ryan Clemons, Family Independence Manager (FIM).

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-46.

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 June 17, 2023, Petitioner submitted a Redetermination and reported having housing expenses. (Exhibit A, pp. 6-13)
2. The mortgage statement was reviewed and the separate homeowners insurance expense was removed from Petitioner's FAP budget because the APW believed that the insurance was included in the monthly mortgage payment. (Exhibit A, p. 1; APW Testimony)

3. The Department verified Petitioner's income utilizing a report from The Work Number. (Exhibit A, pp. 24-30)
4. The changes in the FAP budget based on the shelter expenses and income resulted in a decrease in Petitioner's monthly FAP benefits from \$465.00 to \$278.00. (Exhibit A, pp. 1 and 18-21; APW Testimony)
5. On June 30, 2023, a Notice of Case Action was issued approving FAP as of July 1, 2023 in the amount of \$278.00 per month. (Exhibit A, pp. 40-44)
6. On July 17, 2023, Petitioner requested a hearing contesting the amount of his monthly FAP allotment. (Exhibit A, pp. 3-4)

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 income from employment. The Department counts the gross wages. BEM 501, July 1, 2022, pp. 6-7.

For FAP, a shelter expense is allowed when the FAP group has a shelter expense or contributes to the shelter expense. BEM 554, (April 1, 2023), p. 13. Shelter expenses include property taxes and insurance. 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.

In this case, Petitioner submitted a Redetermination on June 17, 2023 and reported having housing expenses. (Exhibit A, pp. 6-13). The mortgage statement was reviewed and the separate homeowners insurance expense was removed from Petitioner's FAP budget because the APW believed that the insurance was included in the monthly mortgage payment. (Exhibit A, p. 1; APW Testimony). The Department also verified Petitioner's income utilizing a report from The Work Number. (Exhibit A, pp. 24-30). The changes in the FAP budget based on the shelter expenses and income resulted in a decrease in Petitioner's monthly FAP benefits from \$465.00 to \$278.00. (Exhibit A, pp. 1 and 18-21; APW Testimony). On June 30, 2023, a Notice of Case Action was issued approving FAP as of July 1, 2023 in the amount of \$278.00 per month. (Exhibit A, pp. 40-44).

Petitioner testified that his homeowners insurance payment is separate from the monthly mortgage payment. (Petitioner Testimony). The FIM reviewed the mortgage statement in the electronic case record and testified that the statement shows the mortgage payment includes taxes **and/or** insurance. (FIM Testimony, bolding added by ALJ). Accordingly, it appears that the homeowners insurance expense was removed from the FAP budget in error.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined Petitioner's eligibility for FAP.

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 July 1, 2023 effective date, which may include requesting any needed verifications, 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
Trista Waishkey
Washtenaw County DHHS
22 Center Street
Ypsilanti, MI 48198
MDHHS-Washtenaw-Hearings@michigan.gov

Interested Parties

BSC4
M Holden
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Via First Class Mail:

Petitioner
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