



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
SUZANNE SONNEBORN
EXECUTIVE DIRECTOR

MARLON I. BROWN, DPA
ACTING DIRECTOR

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██████████, MI ██████████

Date Mailed: August 30, 2023
MOAHR Docket No.: 23-004185
Agency No.: ██████████
Petitioner: ██████████

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 August 23, 2023, from Detroit, Michigan. Petitioner appeared for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by Sausha Martin, Eligibility Specialist.

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. As of October 1, 2022, Petitioner was approved for FAP benefits of \$516, as she had no earned income at that time.
2. On or around ██████████, 2023, Petitioner submitted an application requesting State Emergency Relief (SER) assistance. On the application, Petitioner reported that she recently began employment, working 40 hours per week and paid ██████████ per hour. (Exhibit A, pp. 15-20)

3. The Department reviewed Petitioner's FAP eligibility to include her newly reported earned income. The Department recalculated Petitioner's FAP budget and determined that she was eligible for \$153 in FAP benefits effective May 1, 2023.
4. On or around March 27, 2023, the Department sent Petitioner a Notice of Case Action advising her that effective May 1, 2023, ongoing, her FAP benefits would be decreased to \$153 for her household size of two. This change was due to the increase in Petitioner's net earned income and a decrease in her housing expenses. (Exhibit A, pp. 21-25)
5. On or around July 21, 2023, Petitioner requested a hearing disputing the decrease in the amount of her FAP benefits to \$153. On her request for hearing, Petitioner reported that she is now responsible for housing expenses of \$463 in monthly rent. (Exhibit A, pp. 3-5)
6. The Department recalculated Petitioner's FAP budget to include her responsibility for housing expenses and to reflect her current earnings. On or around July 25, 2023, the Department sent Petitioner a Notice of Case Action advising her that effective August 1, 2023, her FAP benefits would increase to \$172 monthly. (Exhibit A, pp. 26-32)

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 this case, Petitioner disputed the decrease in her FAP benefits to \$153 effective May 1, 2023. At the hearing, the Department asserted that Petitioner was notified of the decrease in her FAP benefits through the issuance of the March 27, 2023, Notice of Case Action, and Petitioner did not request a hearing to dispute the negative action until July 21, 2023. Although Petitioner indicated she had previously submitted a hearing request disputing the amount of her FAP benefits, Petitioner's testimony was inconsistent as to when the request for hearing was submitted. Petitioner initially testified that she requested a hearing in March 2023, prior to her SER application, however, Petitioner's FAP benefits were decreased after the SER application was submitted. There was some testimony that a request for hearing was received by the

Department on February 21, 2023, (also prior to the decrease in Petitioner's FAP benefits, and was subsequently withdrawn by Petitioner via email on February 24, 2023. Petitioner disputed that she withdrew her hearing request. Petitioner confirmed that she received the March 27, 2023, Notice of Case Action and did not establish that she requested a hearing within 90 days of the date the Notice of Case Action was issued, as required by BAM 600. (March 2021), pp. 4-6. Petitioner was advised that in accordance with BAM 600 and based on her request for hearing dated July 21, 2023, the current amount of Petitioner's FAP benefits would be addressed for July 2023, ongoing.

At the hearing, the Department representative testified that Petitioner's FAP benefits were recalculated to include her earned income as reported on the March 15, 2023, SER application. The Department representative testified that after including Petitioner's earnings, Petitioner's two-person household was eligible for \$153 in FAP benefits. The Department presented the Budget Summary from the March 27, 2023, Notice of Case Action which was thoroughly reviewed to determine if the Department properly calculated Petitioner's FAP benefits.

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 determines a client's eligibility for program benefits based on the client's actual income and/or prospective income. Prospective income is income not yet received but expected. BEM 505 (October 2022), pp. 1-2. In prospecting income, the Department 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, pp. 5-6. A standard monthly amount must be determined for each income source used in the budget. BEM 505, pp. 7-8. Income received biweekly is converted to a standard amount by multiplying the average of the biweekly pay amounts by the 2.15 multiplier. 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. The Department counts gross wages in the calculation of earned income. BEM 501 (April 2022), pp. 6-7.

The Department determined that Petitioner had gross earned income in the amount of [REDACTED], which consisted of Petitioner's earnings from employment. The Department testified that it relied on information obtained from the initial paystub submitted by Petitioner specifically considering pay received on March 2, 2023, in the amount of [REDACTED]. The Department representative testified that Petitioner's first check was used to prospectively budget her earnings, based on the starting income policy in BEM 505. There was no dispute that the income amounts relied upon by the Department at the time the budget was completed were accurate. Upon review, and based on the above referenced prospective budgeting policy, the Department properly converted Petitioner's biweekly pay of [REDACTED] by the 2.15 multiplier and determined that Petitioner had earned income of [REDACTED].

The deductions to income were also reviewed. 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.
- An earned income deduction equal to 20% of any earned income.

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

Petitioner is eligible for an earned income deduction of \$353.80, based on 20% of her earned income. There was no evidence presented that Petitioner had any out-of-pocket dependent care or child support expenses. Therefore, the budget properly did not include any deduction for dependent care, child support or medical expenses. The Department also properly applied a standard deduction of \$193 which was based on Petitioner's confirmed group size of two. With respect to the excess shelter deduction, the Department properly applied the \$624 heat and utility (h/u) standard, which covers all heat and utility costs including cooling expenses. BEM 554, pp. 13-17. It was undisputed that Petitioner had no other housing expenses until August 2023. Upon review, the Department properly calculated the excess shelter deduction of \$13. RFT 255;BEM 554.

After further review, the Department properly determined Petitioner's earned income of [REDACTED] and took into consideration the appropriate deductions to income including the \$353.80 earned income deduction, the \$193 standard deduction, and the \$13 excess shelter deduction to determine that Petitioner had net income of [REDACTED] as reflected on the Budget Summary. Based on net income of [REDACTED] Petitioner's two-person household is eligible for \$153 in monthly FAP benefits for the month of July 2023. RFT 260 (October 2022), p. 17.

The Department also presented evidence in support of the FAP benefit calculation for August 2023 in the amount of \$172. The Budget Summary from the July 25, 2023, Notice of Case Action was thoroughly reviewed. The Department representative testified that the only changes made to the FAP budget were the inclusion of the \$463 housing expense and an updated earned income calculation. With respect to earned income, the Department representative testified that it specifically considered Petitioner's gross earnings of [REDACTED] paid on June 16, 2023, and [REDACTED] paid on June 30, 2023. The Department testified that Petitioner's June 2, 2023, paystub reflecting gross earnings of [REDACTED] was excluded from the prospective budgeting calculation, as it was unusual. Upon review, the Department properly determined that for the benefit month of August 2023, ongoing, Petitioner had earned income of [REDACTED], based on the June 16, 2023, and June 30, 2023, pay dates. In consideration of the \$463 housing expense and the \$624 h/u standard, Petitioner is eligible for an excess shelter deduction of \$342.


After further review, the Department properly determined Petitioner's earned income of [REDACTED] and took into consideration the appropriate deductions to income including the [REDACTED] earned income deduction, the \$193 standard deduction, and the \$342 excess shelter deduction to determine that Petitioner had net income of [REDACTED], as reflected on the Budget Summary in the July 23, 2023, Notice of Case Action. Based on net income of [REDACTED] Petitioner's two-person household is eligible for \$172 in monthly FAP benefits for the month of August 2023, ongoing. RFT 260 (October 2022), p. 17.

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 acted in accordance with Department policy when it calculated the amount of Petitioner's FAP benefits.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.

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
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Petitioner
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