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GOVERNOR

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

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ACTING DIRECTOR

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

Date Mailed: September 19, 2023  
MOAHR Docket No.: 23-004632  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**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 September 11, 2023 via teleconference. Petitioner appeared and represented herself. Pamela Carswell, Assistance Payments Supervisor, appeared on behalf of the Michigan Department of Health and Human Services (MDHHS or Department).

### **ISSUES**

1. Did MDHHS properly deny Petitioner's request for Food Assistance Program (FAP) replacement benefits?
2. Did MDHHS properly calculate Petitioner's 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 March 22, 2023, Petitioner submitted a Food Replacement Affidavit for FAP to MDHHS (Exhibit A, p. 7). Petitioner submitted a letter from DTE Energy indicating that she lost power from February 22, 2023 to February 26, 2023 (Exhibit A, p. 6).

3. On August 7, 2023, MDHHS sent Petitioner a Notice of Case Action indicating that she was approved for FAP benefits at a rate of \$██████ per month for a household of one, beginning July 1, 2023 (Exhibit A, p. 10).
4. On August 8, 2023, Petitioner requested a hearing to dispute the denial of replacement FAP benefits and her FAP benefit rate (Exhibit A, pp. 3-5).

### **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, Petitioner disputed the denial of her application for FAP replacement benefits and disputed her current and ongoing FAP benefit rate.

#### **Replacement FAP Benefits**

MDHHS must issue replacement FAP benefits when the client reports that food purchased with FAP has been destroyed in a domestic misfortune or disaster. 7 CFR 274.6(a)(1); BAM 502 (January 2022), p. 1. Domestic misfortunes or disasters include events beyond the client's control, including fires, floods, and electrical outages. BAM 502, p. 1. Recipients must report the loss within ten days. *Id.* However, if day ten falls on a weekend or holiday and it is reported on the next workday, it is still considered timely. *Id.* Federal regulations provide that the report is considered timely if it is made to the state agency within ten days of the date that the food purchased with FAP benefits is destroyed in a disaster or misfortune, and that the report may be made orally or in writing. 7 CFR 274.6(a)(3).

MDHHS is required to verify the circumstances of the disaster through a collateral contact, a community agency, utility company or home visit. BAM 502, p. 1. Generally, the replacement issuance is provided in the amount of the loss to the household, up to a maximum of one month's allotment, unless the issuance includes restored benefits which shall be replaced to their full value. *Id.* MDHHS is required to discuss the amount of lost food purchased with FAP, and to replace the amount that the client states was lost, up to the value of the current month's allotment. *Id.*, p. 2.

At the hearing, MDHHS testified that Petitioner's request was untimely because it was not made within ten days of the disaster. Petitioner testified that her food spoiled due to

a power outage on or about February 26, 2023, and that she reported the loss to MDHHS on March 21, 2023. MDHHS testified that it received her Replacement Food Affidavit and verification on March 22, 2023. Regardless of whether Petitioner reported the loss on March 21 or March 22, it was beyond the ten-day deadline for requesting FAP replacement benefits. No evidence was presented to show that Petitioner requested FAP replacement benefits before this time before March 21, 2023.

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 acted in accordance with Department policy when it denied Petitioner's request for replacement FAP benefits because the request was untimely.

### **FAP Benefit Rate**

Petitioner also disputed the calculation of her FAP benefit rate. MDHHS determined that Petitioner was eligible for \$[REDACTED] per month in FAP benefits, beginning July 1, 2023 (Exhibit A, p. 10). FAP beneficiaries are entitled to dispute the benefit amount whenever they believe that the amount is incorrect. BAM 600 (March 2021), p. 5.

To determine whether MDHHS properly calculated Petitioner's FAP benefit amount, it is necessary to evaluate the household's countable income. BEM 500 (April 2022), pp. 1-5. MDHHS 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), p. 1. For the purposes of FAP, MDHHS must convert income that is received more often than monthly into a standard monthly amount. BEM 505, pp. 8-9. For Retirement, Survivors, Disability Insurance (RSDI) income, MDHHS counts the gross amounts as unearned income. BEM 503 (January 2023), pp. 29-30.

MDHHS determined that Petitioner received \$2,104.00 per month in unearned income based on the receipt of RSDI, worker's compensation and a pension. MDHHS testified that it budgeted \$1,219.00 in RSDI, which represented the gross monthly amount that Petitioner receives. Petitioner did not dispute the amount. For worker's compensation, MDHHS budgeted \$[REDACTED] per week, or \$[REDACTED] per month. Petitioner estimated that she received \$[REDACTED] per week and stated that the amount is reduced annually. However, she did not provide testimony regarding the exact amount or provide other evidence that she notified MDHHS of any decreases prior to submitting the Request for Hearing. For Petitioner's pension, MDHHS budgeted \$441.45 per month. Petitioner did not dispute the amount. Based on the record, MDHHS properly budgeted Petitioner's income at \$[REDACTED] per month, which represents her total unearned income. There was no evidence of any other income available to Petitioner.

After income is calculated, MDHHS must determine applicable deductions. Petitioner's FAP group is considered a Senior/Disabled/Disabled Veteran (SDV) group. BEM 550 (April 2023), p. 1. 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; BEM 554 (April 2023), p. 1; BEM 556 (October 2023), p. 3.

No evidence was presented that Petitioner had earned income, dependent care expenses, or court-ordered child support.

MDHHS budgeted a medical deduction for \$165.00, which represents Petitioner's Medicare Part B Premium. Petitioner also testified that she submitted documentation of prescription costs related to her medical condition. However, Petitioner testified that this documentation was sent to MDHHS approximately one week before the hearing. MDHHS testified that it received the information and that it was currently processing Petitioner's submission of medical expenses. Because the expenses were submitted after Petitioner's Request for Hearing and MDHHS had not made a determination on the expenses prior to the hearing, the issue is not ripe for judicial review and the undersigned does not have jurisdiction to address the matter. Based on the information that MDHHS had when it made the determination regarding Petitioner's FAP benefit rate on August 7, 2023, MDHHS properly budgeted \$165.00 in verified medical expenses.

MDHHS budgeted the standard deduction for a household of one, which was \$193.00. RFT 255 (February 2023), p. 1. To calculate Petitioner's Adjusted Gross Income (AGI), the standard deduction of \$193.00 and the medical deduction of \$165.00 were subtracted from the countable income of \$[REDACTED] to equal \$[REDACTED].

Next, MDHHS is required to determine the excess shelter deduction. In calculating the excess shelter deduction of \$0.00, MDHHS considered Petitioner's verified housing expenses of \$79.07. To determine the excess shelter deduction, 50% of the AGI is subtracted from the total shelter amount. Subtracting 50% of Petitioner's AGI, or \$[REDACTED], from Petitioner's total shelter amount of \$79.07 equals a negative number, which means that Petitioner is not entitled to an excess shelter deduction. Thus, MDHHS properly calculated that the excess shelter deduction was \$0.00.

To determine Petitioner's net income for FAP, MDHHS subtracted the excess shelter deduction of \$0.00 from Petitioner's AGI of \$[REDACTED] to equal \$[REDACTED]. A household of one with a net income of \$[REDACTED] is entitled to receive \$[REDACTED] per month in FAP benefits. RFT 260 (October 2022), p. 24.

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 MDHHS acted in accordance with Department policy when it calculated Petitioner's FAP benefit rate.

**DECISION AND ORDER**

Accordingly, MDHHS' decisions are **AFFIRMED**.



LJ/tm

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**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**  
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**Interested Parties**

M. Holden  
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**Via-First Class Mail :**

**Petitioner**

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