



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

██████████
██████████
██████████ MI ██████████

Date Mailed: November 15, 2023
MOAHR Docket No.: 23-006543
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

HEARING DECISION

On October 4, 2023, Petitioner, ██████████ requested a hearing to dispute her Food Assistance Program (FAP) benefit amount of \$29.00 per month. As a result, a hearing was scheduled to be held on November 14, 2023, pursuant to MCL 400.9, 7 CFR 273.15, and Mich Admin Code, R 792.11002. Petitioner appeared at the hearing and represented herself. Respondent, Department of Health and Human Services (Department) had Erin Clifford, Assistance Payments Worker, and Cathy Burr, Assistance Payments Supervisor, appear as its representatives. Neither party had any additional witnesses.

One exhibit was admitted into evidence during the hearing. A 45-page packet of documents provided by the Department was admitted collectively as the Department's Exhibit A.

ISSUE

Did the Department properly determine Petitioner's FAP benefit amount when it determined she was eligible for a FAP benefit of \$29.00 per month?

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 had a household size of one.
2. Petitioner was disabled.

3. Petitioner received gross income of [REDACTED] per month from social security RSDI.
4. Petitioner also received income from part-time employment at Meijer. Petitioner was paid weekly, and Petitioner received the following gross wages:
 - a. July 7, 2023, gross pay of [REDACTED];
 - b. July 14, 2023, [REDACTED];
 - c. July 21, 2021, gross pay of [REDACTED]
 - d. July 28, 2023, [REDACTED]
 - e. August 4, 2023, gross pay of [REDACTED];
 - f. August 11, 2023, gross pay of [REDACTED];
 - g. August 18, 2023, [REDACTED];
 - h. August 25, 2023, gross pay of [REDACTED]
 - i. September 1, 2023, gross pay of [REDACTED]
 - j. September 8, 2023, gross pay of [REDACTED];
 - k. September 15, 2023, gross pay of [REDACTED]
 - l. September 21, 2023, [REDACTED]; and
 - m. September 29, 2023, gross pay of [REDACTED]
5. Petitioner paid rent of \$161.00 per month, but Petitioner did not report her increase in rent from her prior rent amount of \$131.00 until after the Department budgeted Petitioner's FAP benefit amount.
6. Petitioner was responsible for paying for utilities (including heating/cooling) in addition to her rent.
7. The Department determined that the maximum FAP benefit Petitioner was eligible for is \$23.00 per month, effective November 1, 2023, based in part on a budgeted gross countable earned income of [REDACTED] per month.
8. The Department subsequently adjusted its budget to reflect Petitioner's rent at \$161.00 per month, and the Department determined that Petitioner was eligible for \$29.00 per month, effective November 1, 2023, based in part on a budgeted gross countable earned income of [REDACTED] per month.
9. Petitioner requested a hearing to dispute her FAP benefit amount.

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) 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 administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

The Department determines a client's monthly FAP benefit amount by determining the client's group size and net household income, and then looking that information up in its applicable Food Issuance Table. BEM 212 (January 1, 2022), BEM 213 (January 1, 2023), BEM 550 (April 1, 2023), BEM 554 (April 1, 2023), BEM 556 (January 1, 2023), RFT 255 (October 1, 2023), and RFT 260 (October 1, 2023).

To determine a client's countable income, the Department must use past income to prospect income for the future, unless changes are expected. BEM 505 (October 1, 2023), p. 6. In general, the Department uses income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month. *Id.* If income from the past 30 days does not appear to accurately reflect what is expected to be received in the benefit month, and fluctuations of income during the past 60 or 90 days appear to accurately reflect the income that is expected to be received in the benefit month, then the Department uses income from the past 60 or 90 days. *Id.*

In this case, Petitioner's income fluctuated some over the past 90 days, so Petitioner's income from the past 90 days was the best income to use to prospect Petitioner's future income. Petitioner received an average of [REDACTED] per week over the 90-day period of July 2023 through September 2023. The weekly pay is multiplied by 4.3 to calculate a standard monthly amount. *Id.* at p. 8. Petitioner's average weekly pay of [REDACTED] multiplied by 4.3 equals a standard monthly amount of [REDACTED]. Thus, Petitioner's gross countable earned income was [REDACTED] per month.

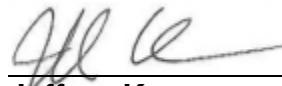
The Department did not properly budget Petitioner's gross countable earned income. The Department budgeted [REDACTED] for Petitioner's gross countable earned income. Since the Department budgeted an amount greater than [REDACTED], the Department did not budget the most accurate gross countable earned income amount, and this resulted in the Department determining that Petitioner's FAP benefit was less than it should have been. With a gross countable earned income of [REDACTED] per month, Petitioner's net income should have been [REDACTED] per month, and Petitioner should have been eligible for a FAP benefit amount of [REDACTED] per month.

DECISION AND ORDER

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 its policies and the applicable law when it determined Petitioner's Food Assistance Program benefit amount.

IT IS ORDERED, the Department's decision is **REVERSED**. The Department shall redetermine Petitioner's FAP benefit amount beginning November 1, 2023, consistent with this decision. The Department shall begin to implement this decision within 10 days of the date of mailing of this decision and order.

JK/ml



Jeffrey Kemm
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

B Cabanaw

N Denson-Sogbaka

MOAHR

Via First Class Mail:

Petitioner

██████████

██████████████████

██████████ MI ██████████