



GRETCHEN WHITMER
GOVERNOR

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

MARLON I. BROWN, DPA
ACTING DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: January 18, 2024
MOAHR Docket No.: 23-008899
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Caralyce M. Lassner

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 January 11, 2024 via teleconference. [REDACTED] Authorized Hearing Representative (AHR), appeared on behalf of and with Petitioner, [REDACTED] Quon Williamson, Eligibility Specialist, appeared on behalf of the Michigan Department of Health and Human Services (the Department).

ISSUE

Did the Department properly calculate Petitioner's household budget to determine her monthly Food Assistance Program (FAP) benefit amount?

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 applied for FAP benefits on [REDACTED] 2023. (Exhibit A, pp. 9-19).
2. The Department interviewed Petitioner on September 18, 2023. (Exhibit A, pp. 20-26).
3. There are two individuals in Petitioner's household who purchase and prepare food together: Petitioner and her adult daughter who receives Retirement, Survivors, and Disability Insurance (RSDI) due to a disability. (Exhibit A, pp. 14, 20).
4. The Department received verification of Petitioner's earned income on September 22, 2023 consisting of paystubs showing gross pay of [REDACTED] on August 4, 2023; August 13, 2023; and September 1, 2023. (Exhibit A, pp. 27-28).

5. On October 9, 2023, the Department issued a Notice of Case Action indicating that Petitioner's group of two was approved for benefits beginning September 11, 2023 as follows:
 - \$15.00 per month for the period of September 11 – September 30, 2023, and
 - \$170.00 per month for the period of October 1, 2023 – August 31, 2024.

(Exhibit A, p. 29).

6. On December 5, 2023, the Department received Petitioner's request for a hearing regarding the expense deductions considered by the Department in determining her approved benefit rate. (Exhibit A, pp. 5-6).

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. 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 filed a hearing request to challenge the deductions considered by the Department and the resulting approved FAP benefit rate. FAP beneficiaries have the right to contest a Department decision that affects their eligibility or benefits levels whenever they believe that the decision is incorrect. BAM 600 (March 2021), p. 5.

To determine whether the Department properly calculated Petitioner's FAP benefit amount, the Department must consider all countable earned and unearned income available to the Petitioner. 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), p. 1. The Department is required to prospect income using the best estimate of income expected to be received during the month and should seek input from the client to establish the estimate, whenever possible. BEM 505, pp. 1, 3. For Retirement, Survivors, and Disability Insurance (RSDI) and Supplemental Security Income (SSI), the Department counts the gross benefit amount as unearned income. BEM 503 (January 2023), pp. 29, 35.

In this case, the Department presented evidence that Petitioner has stable income in the gross amount of [REDACTED] bi-weekly from employment as shown on the paystubs Petitioner provided to the Department. (Exhibit A, pp. 27-28). Although the AHR argued that Petitioner only received [REDACTED] biweekly, the Department is required to use *gross*, not net, employment income in determining the household's income for FAP purposes and must convert income to a standard monthly amount. BEM 505, p. 3. The Department must calculate bi-weekly amounts into a monthly amount by multiplying the bi-weekly amount by 2.15. BEM 505, p. 8. Based on the evidence Petitioner provided to the Department, the Department properly concluded that Petitioner's gross earned income is [REDACTED] as shown in the budget on the October 9, 2023 Notice of Case Action. (Exhibit A, pp. 30, 36).

The Department testified that it obtained unearned income information from the State On-Line Query (SOLQ), the data exchange the Department uses to access information from the Social Security Administration (SSA) concerning individual's federal benefits, that Petitioner's daughter receives monthly RSDI benefits in the amount of [REDACTED]. The October 9, 2023 Notice of Case Action shows that the Department budgeted [REDACTED] for the group's unearned income. (Exhibit A, pp. 30, 36). The AHR disputed this amount; however, neither the AHR nor Petitioner presented any evidence to support a lesser amount.

Neither Petitioner nor the Department assert any additional earned or unearned income in the group. Thus, when adding the earned and unearned income together, the Department properly determined the Petitioner's countable income for FAP purposes to be [REDACTED] per month. (Exhibit A, p. 36).

After countable income is calculated, the Department must determine which deductions are available to Petitioner. Specific and limited deductions are permitted, depending on the source of countable income and the group's composition. Because Petitioner's daughter receives RSDI due to a disability, she is a senior/disabled/veteran (SDV) member of the household. BEM 550 (April 2023), p. 1. Households with SDV members with earned and unearned income may be eligible for the following deductions only:

- 20% earned income deduction.
- Standard deduction based on group size.
- Dependent care expense.
- Medical expense deduction for medical expenses of the SDV member
- Excess shelter deduction.
- Court ordered child support and arrearages paid to non-household members.

BEM 554 (April 2023) p. 1; BEM 556 (January 2023) pp. 3-6.

Petitioner's group has gross countable earned income totaling [REDACTED] and therefore is entitled to 20% reduction of the earned income amount. BEM 550 (April 2023), p. 1. This results in a deduction of \$382.00.

All groups are entitled to a standard deduction in an amount determined by the group size. BEM 550, p. 1. Groups of 1 to 3 received a standard deduction of \$193.00 in September 2023, which increased to \$198.00 effective October 1, 2023. RFT 255 (February 2023 and October 2023). The Department deducted \$198.00 from Petitioner's countable income, as shown in the October 9, 2023 Notice of Case Action. (Exhibit A, p. 30).

No evidence was presented that either person in Petitioner's group have dependent care expenses or court ordered child support expenses. The AHR testified that Petitioner's daughter, who is the SDV member of Petitioner's FAP group, has medical expenses but acknowledged that Petitioner did not inform the Department of such expenses in the application or during the interview (Exhibit A, pp. 15, 25) nor provide any documentation to the Department regarding any medical expenses. The AHR was advised on the record that Petitioner could provide the Department with documentation of her daughter's medical expenses, which could impact the household's FAP in the future.

In determining the excess shelter deduction, the Department must first calculate an adjusted gross income (AGI) for Petitioner by subtracting the earned income deduction, standard deduction, dependent care expenses, medical expenses for SDV members, and court ordered child support payments made by a member of the group from the countable income. The Department properly determined Petitioner's AGI to be [REDACTED]

Next, the Department determines any excess shelter expense deduction. To calculate this amount, the Department reviews Petitioner's housing and utility expenses, if any. The AHR testified that Petitioner has a mortgage expense of \$1,400.00 per month and pays all heat, electric, and other utilities for the household. This testimony is consistent with Petitioner's application and the Department's interview. (Exhibit A, pp. 19, 24, 26).

A FAP group that has heating and other utility expenses, separate from the mortgage payment, is entitled to a heat and utility (h/u) standard amount to be included in the calculation of the excess shelter deduction. BEM 554, p. 17. The h/u standard is the most favorable utility standard available to a client, and FAP groups that receive the h/u standard do not receive any other individual utility standards. BEM 554, p. 16. The standard amount is \$624.00, which increased to \$680.00 effective October 2023. RFT 255 (October 2022 and October 2023). The Department used the amount of \$680.00 for h/u when calculating Petitioner's excess shelter expense, which is favorable to Petitioner. (Exhibit A, p. 30).

Once Petitioner's housing and utility expenses have been determined, the Department adds those amounts together for a total shelter amount. The Department then subtracts

50% of Petitioner's AGI from the total shelter amount. This determines Petitioner's excess shelter deduction. In FAP groups with an SDV member, the excess shelter amount is not limited.

In Petitioner's case, the Department determined Petitioner's total shelter amount is \$2,080.00. The Department subtracted 50% of Petitioner's AGI, in the amount of [REDACTED] from the total shelter amount to determine Petitioner's excess shelter deduction to be \$982.00. (Exhibit A, p. 37). The Department then subtracted the excess shelter deduction of \$982.00 from Petitioner's AGI of [REDACTED] which determined Petitioner's net monthly income, for purposes of FAP, to be [REDACTED] (Exhibit A, p. 30).

Once the net monthly income has been determined under the FAP program, the Department determines what benefit amount Petitioner is entitled to, based on the group size, according to the Food Assistance Issuance Table of RFT 260. Based on Petitioner's two person FAP group size and net income of [REDACTED] Petitioner's monthly benefit beginning October 1, 2023 is \$170.00. RFT 260 (October 2023). This is consistent with the evidence presented. Therefore, the Department acted in accordance with Department policy in calculating, based on the information available to it, Petitioner's monthly FAP allotment for October 2023 ongoing.

The October 9, 2023 Notice of Case Action showed that Petitioner was approved for FAP benefits of \$15.00 for September 11, 2023, the date the Department received her application, to September 30, 2023. FAP benefits for less than full calendar months are prorated from the date of application for categorically eligible groups. BEM 213 (January 2023), p. 4; BAM 115 (January 2023), p. 27. Therefore, because Petitioner applied for benefits on [REDACTED] 2023, Petitioner's benefits for September 11, 2023 through September 30, 2023 should be based on approximately 19 days. Petitioner should have received any portion of the monthly rate for September 2023 that represents 19 days of the month so long as that amount is \$10.00 or more. BEM 556, p. 6. The Department did not present any evidence to support its finding that Petitioner was eligible for only \$15.00 in FAP benefits for September 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 Department:

- a) acted in accordance with Department policy when it determined Petitioner's FAP benefit rate for the period of October 1, 2023 through August 31, 2024, but
- b) failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined the prorated amount of Petitioner's FAP benefits for the period of September 11, 2023 through September 30, 2023.

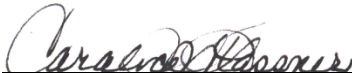
DECISION AND ORDER

Accordingly, the Department's decision is **REVERSED** with respect to Petitioner's FAP benefit amount issued for the period of September 11, 2023 through September 30, 2023.

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 prorated FAP benefits for the period of September 1, 2023 through September 30, 2023;
2. Issue Petitioner supplemental payment for any FAP benefits she was eligible to receive, but did not, from September 1, 2023 through September 30, 2023; and
3. Notify Petitioner in writing of its decision.

CML/ml



Caralyce M. Lassner
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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Macomb County DHHS Warren Dist.
13041 E 10 Mile
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Via First Class Mail:

Authorized Hearing Rep.

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Petitioner

[REDACTED]
[REDACTED]
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