



GRETCHEN WHITMER
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

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Date Mailed: February 20, 2024
MOAHR Docket No.: 23-009381
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

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 January 18, 2024 and February 12, 2024. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Shyla Coleman, Hearings Facilitator and Eligibility Specialist.

ISSUE

Did the Department properly calculate Petitioner's Food Assistance Program (FAP) benefit rate?

Did the Department properly process Petitioner's State Emergency Relief (SER) application?

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 submitted SER applications on ██████████ 2019 and ██████████ 2021. No other SER applications have been noted in Petitioner's electronic case file.
2. In Petitioner's son's case, a separate and distinct case with a different case number than Petitioner's, there was a FAP and SER application submitted on July 14, 2022 listing Petitioner's son as head of household with Petitioner as a household group member. An interview was completed on July 19, 2022.

3. On February 7, 2023, Petitioner's son's FAP case closed. There is no notation or change report indicating that Petitioner's son should be added to the FAP group at any time between February 2023 and December 2024.
4. From January 1, 2021 through August 1, 2023, Petitioner was receiving FAP benefits for a group size of two. On [REDACTED] 2023, Petitioner submitted an application for FAP. This application was denied because she was already receiving FAP benefits. As a result of the application, Petitioner's FAP case switched to a group size of one effective September 1, 2023.
5. On [REDACTED] 2023, Petitioner submitted a new application for FAP and mid-certification contact notice which did not list any new members.
6. On December 9, 2023, the Department issued a Notice of Case Action to Petitioner which approved her for FAP benefits for a group size of one (herself) effective January 1, 2024 in the amount of \$117.00.
7. On December 14, 2023, the Department received Petitioner's request for hearing disputing the Department's failure to include her son on her FAP case and failure to process her SER application.
8. On December 20, 2023, the Department issued another Notice of Case Action to Petitioner informing her that effective February 2, 2024, Petitioner was eligible for \$74.00 in FAP benefits for a group size of two including herself and her son based upon [REDACTED] in unearned income, the \$198.00 standard deduction, the homeless shelter deduction of \$180.00, housing costs of \$356.00, and the heat and utility standard deduction (H/U) of \$680.00. The homeless shelter deduction was added August 2023 and never removed.
9. Petitioner and her son each receive Supplemental Security Income (SSI) in the amount of [REDACTED] per month.

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).

Food Assistance Program (FAP)

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 disputes the Department's failure to include her son on her FAP case. Pursuant to policy, the Department is required to act on a reported change within ten days of becoming aware of the change. BAM 210 (November 2023), p. 7. Benefit increases must affect the first allotment issued ten days after the date the change was reported. *Id.* If the change decreases the benefit, the client must be notified and it affects the next allotment issued at least 11 workdays after the notice was sent. BAM 220 p. 10.

Petitioner was originally receiving FAP benefits for a group size of two up until August 31, 2023. Because Petitioner submitted an application for FAP, the Department interpreted the application as being a notice of a change and changed the group size for FAP benefits because Petitioner was already receiving benefits. Pursuant to policy, an individual can only receive benefits as part of one FAP group at any time. BEM 222 (October 2018), p. 3. Once the Department received the application, her FAP benefits were reduced to a group size of one. Between the date of the application and Petitioner's hearing request on December 14, 2023, there was no reported change to add Petitioner's son back into the group. Furthermore, the Department received a completed mid-certification contact notice which did not list any household members. As a result, Petitioner's FAP benefit group size remained the same through January 1, 2024. Once the Department received Petitioner's hearing request on December 14, 2023, the Department became aware that Petitioner's son should be included in her FAP group. The Department processed the change and added him to the group. Because the change was reported on December 14, the Department had until December 24 to process the change but actually completed the task on December 20, 2023 when it issued the Notice of Case Action. Because eleven days after the notice was issued fell on December 31, 2023, a State of Michigan holiday and non-working day, the change in Petitioner's benefit could not take effect until the next working day, January 2, 2024. But because the month already began, the next issuance month was February 2024. The Department properly made the change in Petitioner's group size effective February 2024 because it resulted in a reduction in benefits from \$117.00 to \$74.00.

A review of the Department's calculations in Petitioner's FAP benefit rate follows:

To determine whether the Department properly calculated Petitioner's FAP benefit rate, the evaluation first starts with consideration of all countable earned and unearned income available to the group. 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 2023), p. 1. 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. 4-9. A standard monthly amount must be determined for each income source used in the budget. BEM 505, pp. 8-9. The only household income is Petitioner's RSDI benefit. Policy requires that the Department consider the gross benefit as unearned income. BEM 503 (January 2023), p. 29. Petitioner and her son each receive [REDACTED] per month in SSI benefits. Therefore, the

household gross income is [REDACTED]. Based on the evidence presented in the hearing, the Department erred in considering Petitioner's household unearned income.

After consideration of income, the Department considers all appropriate deductions and expenses. Petitioner's group includes disabled individuals. Therefore, she is eligible for the following deductions to income:

- Medical expense deduction for the disabled individuals.
- Dependent care expense.
- Excess shelter deduction.
- Court ordered child support and arrearages paid to non-household members.
- Standard deduction based on group size.

BEM 550 (April 2023), pp. 1; BEM 554 (April 2023), p. 1; BEM 556 (January 2023), pp. - 6.

Petitioner is eligible for the standard deduction of \$198.00. RFT 255 (October 2023), p. 1; BEM 556, p. 4. No evidence was presented that Petitioner has dependent care or child support expenses. Next, Petitioner has SDV group members, but no evidence was presented of any verified medical expenses. Per policy an SDV group that has a verified one-time or ongoing medical expense(s) of more than \$35 for an SDV person(s) will receive the SMD. BEM 554, p. 9. The SMD is \$165. *Id.* If the group has actual medical expenses which are more than the SMD, they have the option to verify their actual expenses instead of receiving the SMD. *Id.* In addition, groups that do not have a 24-month benefit period may choose to budget a one-time-only expense for one month or average it over the balance of the benefit period. BEM 554, p. 9. Groups with a 24-month benefit period are given the option to budget the expense for one month, average it over the remainder of the first 12 months of the benefit period, or average it over the remainder of the 24-month benefit period. BEM 554, p. 10. Each of these expenses is deducted from Petitioner's gross income to equal her Adjusted Gross Income (AGI) of [REDACTED].

Once the AGI is calculated, the Department must then consider the Excess Shelter Deduction. BEM 554, p. 1; 7 CFR 273.9(d)(6). The Excess Shelter Deduction is calculated by adding Petitioner's housing costs to any of the applicable standard deductions and reducing this expense by half of Petitioner's AGI. BEM 556, pp. 4-7; 7 CFR 273.9(d)(6)(ii). Groups in which all members are homeless may receive a homeless shelter deduction if they have a shelter expense. BEM 554, p. 14. The FAP group must choose between using their actual shelter expenses or the homeless shelter deduction. *Id.* In August 2023, Petitioner elected to receive the homeless shelter deduction and it was not removed once she obtained housing. This was an error on the part of the Department. Petitioner is responsible for housing expenses of \$356.00 per month in addition to her heat and electric expenses. The heat and utility standard deduction (H/U) of \$680.00 covers all heat and utility costs including cooling except actual utility expenses (repairs or maintenance). BEM 554, p. 16. When a client is not responsible for heating and/or cooling costs, the client may receive utility standard

deductions for non-heat electric, water and/or sewer, telephone, cooking fuel, and trash as applicable. BEM 554, p. 22-25. The Department is required to annually review these standards and make adjustments to reflect changes in costs. 7 CFR 273.9(d)(6)(iii)(B). The expenses and factors outlined here are the only expenses considered for purposes of calculating the FAP budget and determining eligibility. After each item is considered, Petitioner's total housing cost is added together (██████████) and reduced by 50% of Petitioner's AGI (██████████) resulting in an excess shelter cost of \$192.00. *Id.*

Next, Petitioner's excess shelter cost is deducted from her AGI to equal her Net Income, of ██████████. *Id.* A review of the Food Assistance Issuance Table shows that Petitioner is eligible for \$86.00 in FAP benefits for a group size of two. BEM 556, p. 6; RFT 260 (October 2023), p. 21. The Department erred in considering the unearned income of Petitioner's son, as well as the homeless shelter deduction, resulting in an error in the calculation of Petitioner's FAP benefit rate. The Department has not met its burden of proof in establishing that it correctly calculated Petitioner's FAP benefit rate.

State Emergency Relief (SER)

The State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by the Department (formerly known as the Department of Human Services) pursuant to MCL 400.10 and Mich Admin Code, R 400.7001-.7049.

In this case, the Department credibly testified that Petitioner did not submit any applications for SER in her case since March 12, 2021. Petitioner was unable to identify any specific time frames for applications submitted under her case number. The Department did identify an application made under Petitioner's son's name for SER in July 2022. But again, this application was more than 17 months prior to Petitioner's request for hearing. Because no application could be identified which the Department failed to process in Petitioner's case, Petitioner's request for hearing is **DISMISSED** as it relates to SER. ERM 102 (October 2020), p. 2; ERM 404 (March 2023), p. 1; BAM 600 (March 2021).

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 calculated Petitioner's FAP benefit rate effective February 1, 2023.

DECISION AND ORDER

Petitioner's request for hearing related to **SER** is **DISMISSED**.

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 FAP benefit rate effective February 1, 2023;
2. Notify Petitioner in writing of its decision.

AMTM/cc



Amanda M. T. Marler
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 :

Interested Parties

MDHHS-Wayne-18-Hearings
BSC4-HearingDecisions
N. Denson-Sogbaka
B. Cabanaw
M. Holden
E. Holzhausen
J. McLaughlin
MOAHR

Via-First Class Mail :

Petitioner

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Authorized Hearing Rep.

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