



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

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Date Mailed: February 12, 2024
MOAHR Docket No.: 23-009945
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 February 8, 2024. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Danielle Moton, Assistance Payments Worker.

ISSUE

Did the Department properly consider Petitioner's reported change and calculate her Food Assistance Program (FAP) benefit rate?

Did the Department properly determine Petitioner's State Emergency Relief (SER) eligibility?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On ██████████ 2023, Petitioner submitted an SER application for assistance with heat, electric, and moving expenses.
2. On ██████████ 2023, Petitioner submitted a second application for SER assistance with moving expenses.
3. On September 13, 2023, the Department issued an Energy Service Notice informing Petitioner that the Department would issue a payment of \$262.09 for her electric

bills, however, the Department did not issue an State Emergency Relief Decision Notice (SERDN).

4. In September 2023, Petitioner informed the Department that her son [REDACTED] Retirement Survivors Disability Insurance (RSDI) benefit was ending.
5. In November 2023, Petitioner informed the Department that her daughter [REDACTED] RSDI ended October 31, 2023.
6. Household income included an RSDI benefit for Petitioner's son [REDACTED] in the amount of [REDACTED] for November and December 2023 which was reduced by \$51 for an administrative recoupment.
7. Petitioner also had a housing cost of \$358.00 and was responsible for the heat and electric costs.
8. On December 28, 2023, the Department received Petitioner's FAP and SER request for hearing disputing the calculation of her FAP benefit rate as well as the benefit amount issued for SER.
9. On January 18, 2024, the Department finally processed Petitioner's reported change from November, issued a Benefit Notice informing her that her benefit rate for December 2023 and January 2024 was \$1,155.00 for a group size of five, and issued supplements of \$258.00 for December and January to Petitioner for benefits not previously received.
10. No applications for SER benefits were received between September 7, 2023 and December 27, 2023. Petitioner testified that she submitted an SER application on the same day that she requested a hearing.

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 disputes the Department's calculation of her FAP benefit rate. 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. Therefore, the entire benefit of [REDACTED] is considered for Petitioner's household.

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 \$244.00. 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). Petitioner is responsible for housing expenses of \$358.00 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 (\$1,038.00) and reduced by 50% of Petitioner's AGI (██████████) resulting in an excess shelter cost of \$865.00. *Id.*

Next, Petitioner's excess shelter cost is deducted from her AGI to equal her Net Income, a negative number. *Id.* Because Petitioner has a negative net income, in other words expenses exceed income, Petitioner is eligible for the full FAP benefit rate of \$1,155.00. BEM 556, p. 6; RFT 260 (October 2023), p. 1. Although the Department erred in considering the unearned income of Petitioner's son, the error was harmless and resulted in the same FAP benefit rate of \$1,155.00. Furthermore, by issuing two supplements to Petitioner on January 18, 2024 of \$258.00 for both December 2023 and January 2024, the Department has acted in accordance with policy in determining and issuing FAP benefits for Petitioner.

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.

Although Petitioner's hearing request was submitted more than 90 days after the Department issued its payment to her utility provider, the Department failed to issue an SERDN to Petitioner advising her of her eligibility. Because the Department failed to comply with policy in issuing a notice to Petitioner, Petitioner's hearing request is considered timely and is reviewed by this decision. ERM (October 2020), p. 2; ERM 404 (March 2013), p. 1; BAM 600 (March 2021), p. 6.

In this case, Petitioner argues that the Department failed to issue an SER benefit which adequately covered the outstanding balance of her utility bill. Petitioner's ██████████ 2023 application for SER did not identify a specific amount for which she was seeking assistance. The Department's own review of Petitioner's utility bill revealed \$0.00 outstanding for gas utilities, \$262.09 outstanding for electric expenses, and \$669.00 outstanding for the Home Protection Plan through the utility company. Although the Department did not issue an SERDN to Petitioner, the Department notified Petitioner via an Energy Service Notice that it would issue payments on her behalf totaling \$262.09 for her outstanding utility bill. Pursuant to policy, "SER may be used to assist a household who is enrolled in the shut-off protection plan (SPP) as long as all other eligibility requirements are met." ERM 301 (April 2023 and December 2023), pp. 4-5. Because

the Department has not shown that Petitioner was ineligible for additional SER coverage beyond the \$262.09 that was already paid, the Department has not met its burden of proof in establishing that it has acted in accordance with Department policy.

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 issued the full FAP benefit rate of \$1,155.00 to Petitioner, but failed to satisfy its burden of showing that it acted in accordance with Department policy when it issued a partial payment for heat and electric services based upon Petitioner's [REDACTED] 2023 SER application.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to FAP and **REVERSED IN PART** with respect to SER.

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. Reprocess Petitioner's SER application dated [REDACTED] 2023;
2. If otherwise eligible, issue supplements to Petitioner or on her behalf for benefits not previously received; and,
3. 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-17-hearings
BSC4-HearingDecisions
E. Holzhausen
J. McLaughlin
N. Denson-Sogbaka
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Via-First Class Mail :

Petitioner

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