



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
DIRECTOR



Date Mailed: March 14, 2024
MOAHR Docket No.: 24-000775
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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 March 6, 2024, from Detroit, Michigan. Petitioner appeared for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by Kimberly Owens, Assistance Payments Supervisor and Lutrina Webster, Eligibility Specialist.

ISSUE

Did the Department properly calculate the amount of Petitioner's Food Assistance Program (FAP) benefits?

Did the Department properly deny Petitioner's request for State Emergency Relief (SER) assistance?

Did the Department properly process Petitioner's Child Development and Care (CDC) benefits?

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 in the amount of \$1,970 monthly. (Exhibit A, pp. 32-38)
2. In connection with a redetermination, Petitioner's eligibility to receive FAP benefits was reviewed.

3. On or around [REDACTED] 2023, Petitioner submitted an application requesting SER assistance with heat and electric energy services. Petitioner also applied for CDC benefits. (Exhibit A, pp. 41-56)
4. On an unverified date, the Department denied Petitioner's application for CDC benefits. The Department conceded that the application was denied in error and reprocessed the application.
5. On or around December 18, 2023, the Department sent Petitioner a State Emergency Relief Decision Notice informing her that her request for SER assistance with heat and electric energy services was denied because she failed to return requested verifications. (Exhibit A, pp. 61-63)
6. The Department discovered that the SER application had been denied in error, as Petitioner timely returned the requested verifications. The Department reprocessed the [REDACTED] 2023, SER application.
7. On or around December 28, 2023, the Department sent Petitioner a State Emergency Relief Decision Notice, advising her that the Department approved \$850 towards her \$1,798.20 request for assistance with heat services and \$850 towards her \$1,256.13 request for assistance with electric services. The SER Decision Notice further informs Petitioner that she must make a \$948.20 contribution copayment towards her request for assistance with heat and a \$406.13 contribution copayment towards her request for assistance with electric service and provide proof that these payments (totaling \$1,354.33) have been made prior to January 3, 2024, or the Department would not make its approved payment. (Exhibit D)
8. The Department concluded that because Petitioner did not timely submit proof that she made her required contributions, it would not make its approved payment of \$850 towards her request for heat services or \$850 towards her request for electric services.
9. On or around December 28, 2023, the Department sent Petitioner a Notice of Case Action, advising her that effective January 1, 2024, she was approved for monthly FAP benefits in the amount of \$1,009. (Exhibit B)
10. On or around January 17, 2024, the Department sent Petitioner a Notice of Case Action, advising her that effective February 1, 2024, she was approved for monthly FAP benefits in the amount of \$1,387. (Exhibit A, pp. 64-71)
11. On or around January 17, 2024, Department sent Petitioner a Notice of Case Action, advising her that her CDC application was approved with the benefit eligibility period beginning December 3, 2023.

12. On or around January 19, 2024, Petitioner requested a hearing disputing the Department's actions with respect to the FAP, SER, and CDC programs. (Exhibit A, pp. 5-6)
 - a. At the hearing, Petitioner confirmed that the issue she requested a hearing to dispute regarding the CDC program had been resolved. Petitioner confirmed that her application was approved, and her eligibility backdated to the correct date. Petitioner's request for hearing concerning the CDC will be dismissed.

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).

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 disputed the calculation of her FAP benefits for the months of January 2024 (\$1,009) and February 2024 (\$1,387). For the January 2024 benefit period, the Department presented a FAP EDG Net Income Results Budget which was thoroughly reviewed to determine if the Department properly calculated Petitioner's FAP benefits. (Exhibit A, pp. 57-58).

All countable earned and unearned income available to the client must be considered in determining a client's eligibility for program benefits and group composition policies specify whose income is countable. 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), pp. 1-2. 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. 5-6. A standard monthly amount must be determined for each income source used in the budget. BEM 505, pp. 7-8. Income received weekly is converted to a standard amount by multiplying the average of the weekly pay amounts by the 4.3 multiplier. BEM 505, pp. 7-9. An employee's wages include salaries, tips, commissions, bonuses, severance pay, and

flexible benefit funds not used to purchase insurance. The Department counts gross wages in the calculation of earned income. BEM 501 (January 2024), pp. 6-7.

According to the January 2024 budget presented for review, the Department determined that Petitioner had gross earned income in the amount of \$ [REDACTED] which the Department representative testified consisted of Petitioner's earnings from employment with Amazon. The Department identified several pay dates and pay amounts that it obtained from the Work Number as well as paystubs. During the hearing, the Department representative testified that Petitioner was paid \$ [REDACTED] on December 8, 2023, \$ [REDACTED] on December 15, 2023, \$ [REDACTED] on December 22, 2023, and \$ [REDACTED] on December 29, 2023. There was no evidence that the household had any other earned income. It was unclear how the \$ [REDACTED] earned income amount was calculated, as applying the prospective budgeting policy to the income amounts identified by the Department does not equal \$ [REDACTED]. The Department provided conflicting testimony as to which specific earnings were considered in the earned income calculation. The Department representative testified that some of the lower pay amounts may have been excluded as unusual and that it was possible that income belonging to Petitioner's sister may have been added to the budget by mistake. However, upon review, the Department did not establish that it properly calculated Petitioner's earned income as \$ [REDACTED].

With respect to the unearned income calculation, the Department considers the gross amount of money earned from Supplemental Security Income (SSI) in the calculation of unearned income for purposes of FAP budgeting. For an individual who lives in an independent living situation, State SSI Payments (SSP) are issued quarterly in the amount of \$ [REDACTED] and the payments are issued in the final month of each quarter; see BEM 660. The Department will count the monthly SSP benefit amount (\$14) as unearned income. BEM 503 (January 2023), pp. 28-37. Upon review, the Department properly included \$ [REDACTED] as unearned income, based on the receipt of \$ [REDACTED] in SSI for Petitioner's daughter, as well as the \$ [REDACTED] SSP, both of which Petitioner confirmed.

The deductions to income on the net income budget were also reviewed. Petitioner's FAP group includes a senior/disabled/veteran (SDV) member. BEM 550 (April 2023), pp. 1-2. Petitioner's FAP group is eligible for the following deductions to income:

- Dependent care expense.
- Excess shelter.
- Court ordered child support and arrearages paid to non-household members.
- Standard deduction based on group size.
- Medical expenses for the SDV member(s) that exceed \$35.
- An earned income deduction equal to 20% of any earned income.

BEM 554 (January 2024), p. 1; BEM 556 (January 2023), p. 1-8.

In this case, because the earned income was not properly calculated, it follows that the \$ [REDACTED] earned income deduction on the budget was also improperly calculated. There was no evidence presented that Petitioner had any out-of-pocket dependent care, child

support, or medical expenses. Therefore, the budget properly did not include any deduction for dependent care, child support, or medical expenses. See BEM 554.

The Department properly applied a standard deduction of \$279 which was based on Petitioner's confirmed group size of nine. RFT 255 (October 2023), p. 1. With respect to the calculation of the excess shelter deduction, Petitioner confirmed that at the time the budget was completed, she was not responsible for any housing expenses such as monthly rent, a mortgage, property taxes, or home insurance. Thus, the Department properly did not include any housing expense. The Department properly considered the \$680 heat and utility (h/u) standard, which covers all heat and utility costs including cooling expenses. BEM 554, pp. 13-17.

After further review, because of the errors identified above with respect to the earned income calculation, the Department failed to satisfy its burden of showing that Petitioner was eligible for \$1,009 in FAP benefits for January 2024.

The Department presented the Budget Summary from the January 17, 2024, Notice of Case Action in support of its \$1,387 FAP benefit calculation for the month of February 2024. (Exhibit A, pp. 64-69). The Department determined that Petitioner had earned income in the amount of \$[REDACTED] for the month of February 2024. The Department representative testified that Petitioner was paid \$[REDACTED] on January 5, 2024, and \$[REDACTED] on January 12, 2024. Again, the Department's testimony was conflicting as to the exact pay dates and pay amounts considered and upon further review, failed to show that Petitioner's household had earned income of \$[REDACTED] for the month of February 2024 after applying the above prospective budgeting policy. All other figures on the Budget Summary were reviewed and remained the same as the previous month. Thus, based on the above discussion, all other figures were properly calculated. However, because of the Department's inability to explain the earned income calculation, the Department failed to establish that Petitioner's household was eligible to receive \$[REDACTED] in FAP benefits for the month of February 2024.

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 Petitioner disputed the Department's denial of her SER application. Although it was established that Petitioner had submitted several applications for SER, Petitioner clarified at the hearing that at issue was the application she submitted on [REDACTED] 2023, on which she requested assistance with heat and electric energy services.

Eligible households who meet all SER eligibility requirements may receive assistance to help them with household heat and electric costs. Funding for energy services assistance is provided through the Low-Income Home Energy Assistance Program

(LIHEAP). ERM 301 (December 2022), p. 1. When the group's heat or electric service for their current residence is in past due status, in threat of shutoff or is already shut off and must be restored, payment may be authorized to the enrolled provider. ERM 301, pp. 3-4. The SER should be processed using the past due amount and current bills that are not subject to shutoff should not be included in the amount needed. ERM 301, pp. 3-5. The Department must verify past due status, threatened shutoff or the need for gas or electricity and a bill must be obtained before authorizing a payment. The Department will contact the energy company and can use the Online Resources for Agencies (ORA) to access a client's energy account information and verify the account statement provided on the website in lieu of an actual bill. If the online statement is used, a copy must be retained in the case record. ERM 301, pp.11-13.

Additionally, SER group members must use their available income and cash assets that will help resolve the emergency and the Department will not authorize a SER payment unless it will resolve the emergency. the SER group must contribute toward the cost of resolving the emergency if SER does not cover the full cost of the service. Other persons or organizations can also contribute funds on behalf of the SER group. Prior to authorizing the Department's portion of the cost services, verification that the contribution has been paid must be received before any SER payment can be made. ERM 208 (December 2022), pp.1-7. Department policy provides that if the SER group meets all eligibility criteria but has an income or asset copayment, shortfall, and/or contribution, verification of payment must be received in the local office within the 30-day eligibility period or no SER payment will be made and the client must reapply. If another agency is making the payment, proof that payment will be made is required. ERM 208; ERM 103, p. 4.

At the hearing, the Department testified that Petitioner's SER application was initially denied in error on December 18, 2023, but later reprocessed and approved on December 28, 2023. The Department sent Petitioner a State Emergency Relief Decision Notice, advising her that the Department approved \$850 towards her \$1,798.20 request for assistance with heat services and \$850 towards her \$1,256.13 request for assistance with electric services. The SER Decision Notice further informs Petitioner that she must make a \$948.20 contribution copayment towards her request for assistance with heat and a \$406.13 contribution copayment towards her request for assistance with electric services because the SER amount did not cover the full cost of the services requested. Petitioner was instructed to provide proof that these payments (totaling \$1,354.33) have been made prior to January 3, 2024, or the Department would not make its approved payment. (Exhibit D). The Department concluded that because Petitioner did not timely submit proof that she made her required contributions, it did not make its approved payment of \$850 towards her request for heat services or \$850 towards her request for electric services and subsequently denied the application.

Petitioner asserted that she did not receive the December 28, 2023, State Emergency Relief Decision Notice until after the January 3, 2024, deadline. Petitioner asserted that she went to Wayne Metro to secure their assistance with a commitment to pay her copayment but was informed that the Department had already denied the SER request

and it was too late. Upon further inquiry, the Department representative testified that in situations like this, where an application is denied in error and results in late processing, policy clarification has indicated that a client is to be allowed an additional 14 days to submit verification that the copayment has been made. The Department conceded that Petitioner should have been notified that she had additional time to submit proof that she either made her copayment/contribution or that she secured the assistance of an outside agency with a commitment to make the copayment on her behalf. There was no evidence that Petitioner was provided with the additional time allowable according to the policy clarification and due to the Department's late processing. Based on the testimony provided by the Department representative during the hearing, the Department failed to provide Petitioner with sufficient time to submit verification of her copayment or commitment to pay from an outside agency prior to denying her SER application.

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 Department policy when it denied Petitioner's [REDACTED] 2023, SER application.


DECISION AND ORDER

Accordingly, the hearing request with respect to CDC is **DISMISSED** and the Department's FAP and SER decisions are **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. Recalculate Petitioner's FAP budget for January 1, 2024, ongoing;
2. Issue FAP supplements to Petitioner for any benefits she was eligible to receive but did not, if any, from January 1, 2024, ongoing, in accordance with Department policy;
3. Reregister and process Petitioner's [REDACTED] 2023, SER application for assistance with heat and electric services in order to supplement Petitioner and/or her SER provider for any SER benefits that she was eligible to receive but did not from the application date, ongoing; and
4. Notify Petitioner in writing of its decisions.

ZB/ml



Zainab A. Baydoun
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
Richard Latimore
Wayne-Conner-DHHS
4733 Conner
Detroit, MI 48215
MDHHS-Wayne-57-Hearings@michigan.gov

Interested Parties

BSC4
M Holden
B Cabanaw
N Denson-Sogbaka
J McLaughlin
E Holzhausen

Via First Class Mail:

Petitioner

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