



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

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Date Mailed: July 26, 2022
MOAHR Docket No.: 22-002683
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Danielle Nuccio

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 July 18, 2022. The Petitioner appeared and represented herself. The Department of Health and Human Services (MDHHS) was represented by Kathleen Hopper, Assistant Payments Supervisor.

ISSUE

1. Did MDHHS properly calculate Petitioner's Food Assistance Program (FAP) budget to determine her monthly amount of benefits?
2. Did MDHHS properly deny Petitioner's ██████████ 2022 State Emergency Relief (SER) application due to excess income?
3. Did MDHHS properly deny Petitioner's ██████████ 2022 cash assistance application due to excess income?

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 ██████████ 2022, Petitioner submitted an application for FAP and SER benefits for a two-person group, consisting of her adult daughter, ██████████ (Daughter), and herself.
 - a. Petitioner and Daughter are ██████████ (over ██████ years old), disabled or disabled veteran (S/D/V) individuals.

- b. Petitioner receives \$[REDACTED] per month in Retirement, Survivors, Disability Insurance (RSDI) benefits.
 - c. Daughter receives \$[REDACTED] per month in RSDI benefits.
 - d. Daughter works limited hours at [REDACTED] (Daughter Employer) (Exhibit B, p. 1).
 - e. Petitioner reported no child support or dependent care expenses.
 - f. Petitioner reported paying \$900.00 per month in housing expenses and is responsible for paying for utilities.
 - g. Petitioner requested SER for past due bills for heat, electricity, and water.
- 2. On April 11, 2022, MDHHS issued a State Emergency Relief Decision Notice informing Petitioner that her SER application was denied because her countable income is higher than the maximum amount allowed for the SER program (Exhibit A, pp. 5-7).
 - 3. On April 11, 2022, MDHHS issued a Notice of Case Action to Petitioner informing her that she was eligible for FAP benefits in the amount of \$20.00 monthly for a group size of two based upon \$[REDACTED] in household income (Exhibit A, pp. 10-14).
 - 4. On [REDACTED], 2022, Petitioner applied for cash assistance for a group size of two.
 - 5. On June 2, 2022, MDHHS issued a Notice of Case Action to Petitioner informing her that she was not eligible for cash assistance and has excess income for eligibility (Exhibit A, pp. 23-27).
 - 6. On June 24, 2022, MDHHS received a timely submitted request for hearing from Petitioner disputing the monthly amount of FAP benefits she is eligible to receive and the denial of her SER and cash assistance applications due to excess income (Exhibit A, pp. 3-4).

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.

Petitioner requested a hearing to dispute the determination of her monthly FAP amount. Petitioner was approved to receive \$20.00 per month in FAP benefits.¹

All FAP groups that contain a Senior, Disabled, or Disabled Veteran (S/D/V) group member must have income below the Net Income Limit. BEM 550 (January 2022), p. 1. At the time of Petitioner's application, the Net Income Limit for a group size of two was \$1,452.00. RFT 250 (October 2021), p. 1. FAP benefit amounts are determined by a client's net income. BEM 556 outlines the factors and calculations required to determine a client's net income. FAP net income factors group size, countable monthly income, and relevant monthly expenses. MDHHS presented budget documents listing the calculations to determine Petitioner's FAP eligibility. During the hearing, all relevant budget factors were discussed with Petitioner.

In determining Petitioner's FAP eligibility, MDHHS factored a benefit group size of two. Petitioner confirmed the benefit group size. MDHHS properly recognized that Petitioner is considered a S/D/V group.

MDHHS factored that Petitioner's group's unearned income was \$[REDACTED] per month. Petitioner and Daughter receive this monthly amount in RSDI benefits. Petitioner confirmed this unearned income amount used by MDHHS is correct.

Daughter works limited hours at Daughter Employer. MDHHS calculated \$[REDACTED] per month in earned income from Daughter. Petitioner disputed this amount, stating that Daughter's work hours vary and she does not believe that her earned income per month reaches this amount. MDHHS did not testify as to how the earned income amount was calculated. MDHHS offered into evidence income information from Daughter Employer, to be submitted after the hearing as Exhibit B. Upon review, Exhibit B only documents the number of hours that Daughter worked in March but does not contain any information regarding her wages (see Exhibit B, p. 1). Since MDHHS is unable to show how the prospective earned income was calculated, they have failed to satisfy their burden that they acted in accordance with policy in calculating Petitioner's household income to determine her monthly FAP allotment.

It is also noted that while Petitioner reports \$900.00 in monthly housing expenses, MDHHS budgeted only \$800.00 when calculating Petitioner's Excess Shelter Deduction (see Exhibit A, p. 22). However, when issuing the Notice of Case Action to Petitioner, MDHHS lists \$900.00 in housing expenses (see Exhibit A, p. 11). This discrepancy must be addressed when recalculating Petitioner's household budget.

¹ Though Petitioner is only eligible for \$20.00 in monthly FAP benefits, MDHHS has issued the maximum FAP issuance for a client's group size since March 2020. The extra benefits are a result of a temporary policy during the COVID-19 pandemic. As the policy is only temporary, a full analysis of Petitioner's FAP eligibility is still appropriate.

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, Petitioner submitted an application for SER benefits on March 29, 2022 for assistance with energy-related services. MDHHS determined Petitioner had excess income and denied her SER application.

SER helps to restore or prevent shut off of a utility service specified in this item when service is necessary to prevent serious harm to SER group members. ERM 302 (October 2021), p. 1. A household may receive one SER payment for heat and one for non-heat electricity, up to the SER cap, each fiscal year based on the SER Service Request Date. ERM 301 (December 2021), p. 1. In order to receive assistance, the heat or electric service for the client's current residence must be in past-due status, in threat of shut off, or already in shut-off status. ERM 301, p. 3. SER group members must use their available income and cash assets that will help resolve the emergency. There are no income copayments for SER energy services. ERM 208 (October 2021) p. 1. With respect to income, clients are either eligible or they are not. ERM 208, p. 1. For a group to be eligible for energy services, the combined monthly net income that is received or expected to be received by all group members in the 30-day countable income period, cannot exceed the standard for SER energy/ the Low Income Home Energy Assistance Program (LIHEAP) services for the number of group members. ERM 208, p. 1. If the income exceeds the limit, the request must be denied. ERM 208, p. 1. The SER income need standard for energy/LIHEAP for a group size of two is \$2,178.00. ERM 208, p. 6. Heat and electric are energy-related services. ERM 301 (December 2021), pp. 3-4).

Net unearned income must be determined by deducting all of the following from the gross amount received: (i) mandatory withholding taxes; (ii) court ordered child support paid, including arrears, but not more than the amount ordered by the court. There is no deduction is made for paid, voluntary child support; (iii) payments for health insurance; and (iv) Medicare premiums that will not be reimbursed. ERM 206 (November 2019), pp. 4-5. Earned income is permitted a 25% deduction for withholding taxes in addition to deductions for health insurance, other deductions required as a condition of employment, court ordered child support, and dependent care costs. ERM 206, p. 5.

MDHHS testified that to determine Petitioner's SER eligibility they only considered her "actual income" and concluded that she exceeded the income limit for a group size of two. No supporting documentation or budgets were presented as to this conclusion. Per policy, MDHHS should have excluded Petitioner's Medicare Part B premium from Petitioner's total monthly RSDI amount of \$[REDACTED] when calculating her unearned income. As discussed previously, MDHHS did not present evidence regarding Petitioner's household earned income amount, so it is unclear if MDHHS properly deducted 25% from the earned income amount. Given that the RSDI income on its own is not much over the SER income limit, the calculation of these deductions is essential

to determining whether Petitioner is income eligible for SER. Since MDHHS is unable to show the calculation of Petitioner's household budget to defend the determination that Petitioner is over the income limit, MDHHS has failed to satisfy their burden that they acted in accordance with policy in denying Petitioner's application for SER.

Cash Assistance:

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101-.3131.

The State Disability Assistance (SDA) program is established by the Social Welfare Act, MCL 400.1-.119b. The Department of Health and Human Services (formerly known as the Department of Human Services) administers the SDA program pursuant to 42 CFR 435, MCL 400.10 and Mich Admin Code, R 400.3151-.3180.

In order to receive FIP or SDA benefits, financial need must exist. Financial need is established, in part, when a client passes the qualifying deficit test and/or the issuance deficit test. BEM 518 (January 2020), BEM 515 (January 2022). At application, MDHHS performs the qualifying deficit test by subtracting budgetable income from the certified group's payment standard for the application month. The payment standard is the maximum benefit amount that can be received by the certified group. BEM 515, p 1; BEM 518, p 1. To perform the issuance deficit test, MDHHS subtracts budgetable income from the applicable payment standard for the benefit month. BEM 518, p 1. Financial need exists if there is at least a \$10.00 deficit after income is budgeted. If there is no deficit, the group is ineligible for assistance. BEM 518, pp. 2-3. Thus, if Petitioner's group's income is less than the payment standard for the month being tested, the group will be eligible for FIP benefits. The FIP monthly assistance payment standard (based on EDG participation status and FIP certified group size) applicable to Petitioner's group size of two is \$403.00. RFT 210 (April 2017), pp. 1-2. The SDA payment standard applicable to Petitioner is \$200.00, as she is an individual living alone in an independent living arrangement. RFT 225 (December 2013), p. 1.

In this case, MDHHS testified that Petitioner was not eligible for FIP or SDA because her household income exceeded the budgetary needs test. No budgets were presented in support of this determination. Since MDHHS has not presented documentation of Daughter's earned income and has not presented Income Test budgets for FIP or SDA, it is unable to be determined if they properly budgeted Petitioner's household income to support the conclusion that she is ineligible for cash assistance. Therefore, MDHHS has failed to satisfy its burden of showing that it acted in accordance with Department policy when denying Petitioner's application for cash assistance.

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 MDHHS failed to satisfy

its burden of showing that it acted in accordance with Department policy when it denied Petitioner's [REDACTED] 2022 application for FAP and SER and when it denied Petitioner's [REDACTED] 2022 application for FIP and SDA.

DECISION AND ORDER

Accordingly, MDHHS' 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. Reprocess Petitioner's [REDACTED] 2022 SER application;
2. If eligible, issue supplements to Petitioner for any SER benefits that she was eligible to receive but did not from March 29, 2022 ongoing;
3. Recalculate Petitioner's FAP budget for March 29, 2022 ongoing;
4. If Petitioner is determined to be eligible for a higher monthly FAP amount than previously approved for, issue supplements to Petitioner for any FAP benefits that she was eligible to receive but did not from March 29, 2022 ongoing.
5. Reprocess Petitioner's [REDACTED] 2022 FIP and SDA application;
6. If eligible, issue supplements to Petitioner for any FIP or SDA benefits that she was eligible to receive but did not from April 25, 2022 ongoing;
7. Notify Petitioner of its decision(s) in writing.

DN/mp



Danielle Nuccio

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

MDHHS-Oakland-District-IV-Hearings

E. Holzhausen

L. Karadsheh

D. Sweeney

B. Sanborn

M. Holden

MOAHR

T. Bair

BSC4

Via-First Class Mail :

Petitioner

[REDACTED]

[REDACTED]

[REDACTED] MI [REDACTED]