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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: October 12, 2022
MOAHR Docket No.: 22-003449
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Linda Jordan

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 September 19, 2022. Petitioner appeared and represented herself. Alicia Jackson, Eligibility Specialist, represented the Michigan Department of Health and Human Services (MDHHS or Department). A continued hearing was held on October 3, 2022. Petitioner appeared and represented herself. Valarie Foley, Hearings Facilitator, represented MDHHS.

ISSUE

Did MDHHS properly determine Petitioner's Food Assistance Program (FAP) benefit rate?

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.
2. From May 1, 2022 to July 31, 2022, MDHHS determined that Petitioner was eligible for FAP at a rate of \$██████ per month based on \$██████ in monthly self-employment income and \$██████ in monthly unearned income (Exhibit 1, p. 13).
3. In July 2022, Petitioner submitted FAP redetermination paperwork timely (Exhibit A, p. 1). She also submitted proof of self-employment expenses and medical expenses (Exhibit 1, pp. 18-48).
4. On July 1, 2022, MDHHS conducted an interview with Petitioner by phone.

5. On July 1, 2022, MDHHS sent Petitioner a Notice of Missed Appointment, which was sent in error (Exhibit A, p. 5).
6. On August 15, 2022, MDHHS sent Petitioner a Notice of Case Action approving Petitioner for FAP benefits for a household of one at a rate of \$[REDACTED] per month from August 1, 2022 to August 31, 2022 and at a rate of \$[REDACTED] per month from September 1, 2022 to July 31, 2023 (Exhibit A, p. 6). The FAP benefit rate was based on monthly self-employment income of \$[REDACTED] and unearned income of \$[REDACTED] (Exhibit A, p. 7). Additionally, MDHHS budgeted \$[REDACTED] for Petitioner's housing costs and [REDACTED] for Petitioner's medical expenses (Exhibit A, p. 7).
7. On [REDACTED] 2022, Petitioner filed a Request for Hearing to dispute MDHHS' actions.

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. MDHHS 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 MDHHS' determination of her FAP benefit rate. MDHHS alleged that when it processed Petitioner's redetermination in July 2022, it could not accept Petitioner's proof of self-employment expenses because the expenses were not in the company's name and the documents did not have enough information to determine that they were expenses related to Petitioner's business.

It is noteworthy that MDHHS was ordered to recalculate Petitioner's FAP budget in previous MOAHR cases due to MDHHS' failure to properly budget Petitioner's self-employment income and medical expenses, including most recently, on April 7, 2022 in MOAHR Docket No. 22-000248. In that case, the undersigned Administrative Law Judge (ALJ) ordered MDHHS to recalculate Petitioner's FAP budget for October 1, 2021 ongoing, budgeting allowable self-employment expenses and medical expenses, and only requesting additional verifications when necessary and after confirming that it did not already have the documentation in Petitioner's file.

The record shows that MDHHS has once again failed to properly budget Petitioner's self-employment income and medical expenses. Countable income from self-employment equals the total proceeds minus allowable expenses incurred producing

the income. BEM 502 (October 2019), p. 3. Allowable expenses (except for MAGI-related Medicaid) are the higher of 25% of the total proceeds, *or actual expenses if the client chooses to claim and verify the expenses*. BEM 502, p. 3 (emphasis added).

BEM 502, pp. 3-4, provides a list of expenses that are allowed when determining self-employment countable income. The allowable expenses relevant to Petitioner's case include identifiable expenses of labor, stock, raw material (merchandise); transportation costs while on the job; and "any other identifiable expense of producing self-employment income" except for the exclusions listed in policy. *Id.*, p. 4. Excluded expenses include a net loss from a previous period; federal, state and local income taxes; personal entertainment and other individual business expenses; money set aside for retirement and depreciation on equipment; real estate or other capital investments. *Id.*

MDHHS is required to obtain verification when it is required by policy or information is unclear or incomplete. BAM 130 (January 2022), p. 1. To obtain verification, MDHHS must tell the client what verification is required, how to obtain it and the due date. *Id.*, p. 3. MDHHS is required to use a VCL to request verification from clients. *Id.* The client must obtain the requested verification, but the local office must assist the client if they need and request help. *Id.*, p. 3. If neither the client nor the local office can obtain verification despite a reasonable effort, MDHHS must use the best available information. *Id.* If no evidence is available, MDHHS must use its best judgement. *Id.*

MDHHS allows the client ten calendar days to provide the requested verification. *Id.*, p. 7. Verifications are considered timely if received by the date that they are due. *Id.* MDHHS sends a negative action notice when the client indicates a refusal to provide the requested verification, or the time period given on the VCL has lapsed and the client has not made a reasonable effort to provide it. *Id.* For FAP, if the client contacts MDHHS prior to the due date requesting an extension or assistance in obtaining verifications, MDHHS is required to assist the client but may not grant an extension. *Id.*

The record shows that Petitioner submitted substantial documentation outlining her expenses from her self-employment income for several months and that MDHHS has not budgeted her self-employment income and expenses properly. In June 2022, Petitioner sent MDHHS documents to verify her self-employment income and expenses (Exhibit 1, p. 12, pp. 18-55). The documents included a table of contents describing each record or receipt for the self-employment expenses and categorized each expense in line with the Department's Self-Employment Income and Expense form (Exhibit 1, pp. 18-19).

Petitioner submitted evidence that she maintains a craft booth in which she sells items that she has made. Petitioner submitted Self-Employment Income and Expense Statements to MDHHS showing her self-employment income and expenses for three months. In April 2022, for example, the statement indicated that she received \$[REDACTED] in monthly income from her craft business and that her expenses for producing that income were \$[REDACTED] (Exhibit 1, p. 22). Based on these amounts, Petitioner alleged that

her monthly self-employment income was \$[REDACTED]. The expenses included \$[REDACTED] in merchandise, \$[REDACTED] in transportation costs, \$[REDACTED] for rent of business space and \$[REDACTED] for other/security tags and internet (Exhibit 1, p. 22). Petitioner included receipts and testified that the \$[REDACTED] expense included merchandise and supplies that she bought to create her crafts.

MDHHS alleged that Petitioner's proof of self-employment expenses was insufficient because the expenses were not in the "company's name," and it could not confirm that the expenses were related to the business. MDHHS failed to provide any law or regulation to show that self-employment income or expenses must be in a company name separate from the individual's own name. This reason for rejecting Petitioner's self-employment information is invalid. Additionally, if MDHHS had questions regarding the particular expenses that Petitioner claimed, it should have contacted her for more information or sent a VCL. Petitioner testified that the expenses were related to her craft business and organized them into the categories that MDHHS provided. Further, there is no evidence that MDHHS requested additional verification of the expenses and no evidence that Petitioner failed to cooperate with MDHHS at any time.

MDHHS also failed to budget Petitioner's medical expenses. Because Petitioner has a disability, her FAP group is considered a senior/disabled/veteran (SDV) group. BEM 550 (January 2022), pp. 1-2. SDV groups are eligible for a deduction for medical expenses. Policy provides that an SDV person who has a verified one-time or ongoing medical expense or expenses of more than \$[REDACTED] is entitled to the Standard Medical Deduction (SMD) of \$[REDACTED]. BEM 554 (January 2022), p. 9. If the group has actual medical expenses which are more than the SMD, the client has the option to verify the actual expense instead of receiving the SMD. If the verified expense minus \$[REDACTED] is greater than the SMD, the client will receive the verified expense minus \$[REDACTED]. *Id.* MDHHS is required to estimate an SDV person's medical expenses for the benefit period. BEM 554, p. 12.

Petitioner submitted evidence that she had ongoing medical expenses that were not covered by insurance, including periodontal maintenance cleanings, which Petitioner is required to do every three months (Exhibit 1, pp. 48-55). Petitioner provided a letter from her provider, a statement showing the cost of the service and an active care plan establishing that the expense was current (Exhibit 1, pp. 48-55). These expenses represent allowable medical expenses that were incurred and will continue to be incurred during her benefit period. See BEM 554, pp. 11-12. The periodontal maintenance cleanings result in a bill for \$[REDACTED] every three months (Exhibit 1, pp. 49-55). This averages to a monthly cost of \$[REDACTED]. Therefore, Petitioner is entitled to the SMD of \$[REDACTED] because her monthly medical expenses exceed \$[REDACTED]. MDHHS failed to include the SMD in Petitioner's FAP budget.

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 did not act in accordance with Department policy when it calculated Petitioner's FAP budget.

DECISION AND ORDER

Accordingly, MDHHS' decision is **REVERSED**.

MDHHS 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 from August 1, 2022 ongoing, budgeting Petitioner's verified self-employment expenses, contacting Petitioner for explanation of expenses if necessary, and only requesting documents that it has confirmed that it needs and does not have in Petitioner's file;
2. Recalculate Petitioner's FAP budget from August 1, 2022 ongoing, budgeting the \$[REDACTED] Standard Medical Deduction;
3. Issue supplements for any benefits that Petitioner was entitled to receive but did not from August 1, 2022 ongoing; and
4. Notify Petitioner of its decision in writing.



LJ/tm

Linda Jordan
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
Susan Noel
Wayne-Inkster-DHHS
26355 Michigan Ave
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Interested Parties
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Via-First Class Mail :

Petitioner
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