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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: September 26, 2022
MOAHR Docket No.: 22-003700
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 September 22, 2022. The Petitioner appeared and represented himself. The Department of Health and Human Services (MDHHS) was represented by Kristina Warner, Eligibility Specialist and Hearings Facilitator.

ISSUE

Did MDHHS properly calculate Petitioner's Food Assistance Program (FAP) budget to determine his monthly FAP amount?

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 is an ongoing recipient of FAP for a group size of one. Petitioner is a ██████████ (over ████████ years old), disabled or disabled veteran (S/D/V) individual.
2. Petitioner receives \$██████████ monthly in Supplemental Security Income (SSI) and \$██████████ in monthly State SSI Payments (SSP) benefits.
3. Petitioner reported to MDHHS that he moved to a new apartment and now pays \$237.00 per month in rent, which includes utilities.
4. On August 23, 2022, MDHHS issued a Notice of Case Action to Petitioner, informing him that, effective October 1, 2022, his FAP will decrease to \$46.00 monthly (Exhibit A, pp. 14-18).

5. On August 31, 2022, Petitioner verbally requested a hearing to dispute the calculation of his monthly FAP amount.

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 verbally requested a hearing to dispute the calculation of his monthly FAP benefits.¹ Following Petitioner's update in housing expenses, MDHHS determined Petitioner to be eligible for \$46.00 monthly in FAP benefits, effective October 1, 2022.²

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 one. Petitioner confirmed his benefit group size.

MDHHS factored that Petitioner's group's unearned income is \$[REDACTED] per month. This amount consists of monthly Supplemental Security Income (SSI) of \$[REDACTED] and \$[REDACTED] in monthly State SSI Payments (SSP) benefits. All countable earned and unearned income available to the client must be considered in determining a client's eligibility for program benefits. BEM 500 (April 2022), pp. 1-5. MDHHS considers the gross amount of money earned from SSI in the calculation of unearned income for purposes of FAP budgeting. BEM 503 (October 2022), pp. 35-37. For an individual who lives in an independent living situation, State SSI Payments (SSP) are issued quarterly in the amount of \$42.00; and the payments are issued in the final month of each quarter; see

¹ Clients may verbally request hearings to dispute ongoing FAP eligibility. BAM 600 (March 2021) p. 2.

² Though MDHHS determined that Petitioner is only eligible for \$46.00 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.

BEM 660. MDHHS will count the monthly SSP benefit amount (\$██████) as unearned income. BEM 503, pp. 36-37; BEM 660 (October 2021), pp. 1-2; RFT 248 (January 2022), p. 1. Petitioner confirmed that the unearned income amounts that MDHHS relied upon were correct. No other income was reported by Petitioner or factored into the budget by MDHHS. Therefore, MDHHS properly calculated the household income.

MDHHS uses certain expenses to determine net income for FAP eligibility and benefit levels. BEM 554 (October 2022) p. 1. For groups with a senior (over 60 years old), disabled or disabled veteran (S/D/V) member, MDHHS considers the following expenses: a standard deduction, childcare, medical expenses above \$35.00 for each S/D/V group member(s), court-ordered child support and arrearages paid to non-household members, and an uncapped excess shelter expense. BEM 554, p. 1. Petitioner confirmed that he did not submit medical expenses to MDHHS for their consideration. Petitioner confirmed that he has no childcare or child support expenses. Therefore, the budget properly excluded any deduction for dependent care, child support or medical expenses. However, since MDHHS calculated Petitioner's budget to be effective on October 1, 2022, they should have used the increased standard deduction amount of \$193.00 for a group size of one. This increased standard deduction is effective October 1, 2022. See RFT 255 (October 2022), p. 1. Therefore, MDHHS did not properly calculate Petitioner's household deductions in accordance with updated policy.

Petitioner reported that he now pays \$237.00 per month in rent, which includes utilities. In calculating the excess shelter expense, MDHHS considers a heat/utility standard. The heat/utility (h/u) standard covers all heat and utility costs including cooling expenses. BEM 554, p. 15. FAP groups that qualify for the h/u standard do not receive any other individual utility standards. BEM 554, p. 15. FAP groups whose heat is included in the cost of their monthly rent may still be eligible for the h/u standard if: they are billed for excess heat payments from their landlord; they have received a home heating credit in an amount greater than \$20 for the applicable period; or they have received a Low Income Home Energy Assistance Payment (LIHEAP) or a LIHEAP payment was made on their behalf in an amount greater than \$20 for the applicable period. BEM 554, pp. 15-19. Additionally, FAP groups who pay cooling (including room air conditioners) are eligible for the h/u standard if they verify their responsibility to pay for non-heat electric expenses. BEM 554, p. 16. FAP groups not eligible for the h/u standard who have other utility expenses or contribute to the costs of other utility expenses are eligible for the individual utility standards. BEM 554, p. 21. MDHHS testified that it calculated Petitioner's housing expenses from his report of \$237.00 in rent, which includes utilities. No evidence was presented that Petitioner qualifies for the h/u credit for paying any qualifying utilities. MDHHS credited Petitioner for the telephone standard of \$30.00 for paying for his phone. RFT 255 (October 2022), p. 1. MDHHS only credits FAP benefit groups with an "excess shelter" expense. The excess shelter expense is calculated by subtracting half of the adjusted gross income from the total shelter obligation. Even using the increased standard deduction amount would result in a negative number. Therefore, Petitioner's excess shelter amount remains \$0.00.

Effective October 1, 2022, FAP issuance amounts increase per updated policy. However, MDHHS calculated that Petitioner would receive \$46.00 per month, which is what was the amount effective October 2021 through September 2022. MDHHS did not rely on updated policy in determining Petitioner's monthly FAP amount.

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 MDHHS did not act in accordance with Department policy when it determined Petitioner to be eligible for \$46.00 in monthly FAP benefits.

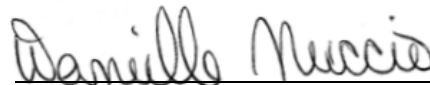
DECISION AND ORDER

Accordingly, 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. Recalculate the FAP budget for October 1, 2022 ongoing in accordance with updated Department policy and consistent with this Hearing Decision;
2. Notify Petitioner of its decision 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-Jackson-Hearings
D. Sweeney
M. Holden
MOAHR
BSC4

Via-First Class Mail :

Petitioner

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[REDACTED]
[REDACTED] MI [REDACTED]