



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED] MI [REDACTED]

Date Mailed: October 17, 2022
MOAHR Docket No.: 22-004127
Agency No.: [REDACTED]
Petitioner: [REDACTED]

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 October 10, 2022. The Petitioner was self-represented and had his wife [REDACTED] appear as a witness. The Department of Health and Human Services (Department) was represented by Michelle Collins, Eligibility Specialist and Hearings Facilitator.

ISSUE

Did the Department properly issue Family Independence Program (FIP) benefits for Petitioner's group?

Did the Department properly deny Petitioner's Food Assistance Program (FAP) application due to exceeding the income limit?

Did the Department properly deny Petitioner's application for State Emergency Relief (SER) due to exceeding the income limit?

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 [REDACTED] 2022, Petitioner applied for FAP benefits reporting himself, his wife, and his daughters [REDACTED] and [REDACTED] as household members.
2. Petitioner receives a gross Retirement Survivors Disability Insurance (RSDI) benefit of \$[REDACTED] and a gross Supplemental Security Income (SSI) benefit of \$[REDACTED]; his net benefit is \$[REDACTED] and \$[REDACTED] respectively.

3. Petitioner's wife receives \$ [REDACTED] in gross SSI benefits and a net benefit of \$ [REDACTED].
4. [REDACTED] attends [REDACTED] College on a part-time basis, does not participate in a meal plan, nor does she have work study.
5. [REDACTED] works full-time at [REDACTED] and has her address listed with the Employer as the same address Petitioner utilized for his application as noted by the Equifax Work Number Report.
6. [REDACTED] receives a biweekly paycheck which for the pay day August 12, 2022 was \$ [REDACTED] and for the pay date August 26, 2022 was \$ [REDACTED].
7. Petitioner pays \$149.43 per month in property taxes and is responsible for all utilities.
8. On September 1, 2022, the Department issued a Notice of Case Action to Petitioner informing him that his FAP application had been denied due to exceeding the income limit for a group size of four. The Notice of Case Action also informed the group that FIP benefits had been denied effective July 1, 2022 for exceeding the income limit.
9. On September 2, 2022, the Department received Petitioner's application for SER assistance with his electricity bill in the amount of \$338.60.
10. On September 7, 2022, the Department issued an SER Decision Notice informing Petitioner that his application had been denied due to exceeding the income limit.
11. On September 12, 2022, the Department received Petitioner's request for hearing disputing the denial of Petitioner's FAP and SER applications as well as the amount of the FIP benefit.
12. At the hearing, Petitioner disputed [REDACTED] presence in the home indicating she lived in a dorm at [REDACTED].

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).

Family Independence Program (FIP)

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.

Petitioner is disputing the amount of the FIP benefits issued to him. Based upon the Notice of Case Action on September 1, 2022, the FIP case had been denied as of July 16, 2022 due to excess income. However, a FIP Budget for November 2022 and testimony was presented by the Department that since mid-July 2022, \$158.00 per month has been issued to Petitioner with July's benefit being prorated. Although the evidence presented by the Department is conflicting and the Department has not met its burden of proof, Petitioner's group's eligibility for FIP is evaluated here for purposes of thoroughness.

In FIP cases, group composition requires that the group must include a dependent child who lives with a legal parent, stepparent or other qualifying caretaker. BEM 210 (July 2021), p. 1. In addition, mandatory FIP eligibility determination group members include the child's legal siblings and step-siblings who meet the definition of a dependent child. BEM 210, p. A dependent child is an unemancipated child who lives with a caretaker and is one of the following: under age 18 or age 18 and a full-time high school student. BEM 210, p. 2. Therefore, Petitioner's eligibility determination group includes Petitioner, his wife, and his daughter [REDACTED] but does not include [REDACTED] as [REDACTED] is age [REDACTED] and enrolled in college. However, because Petitioner and his wife are SSI recipients, their income, assets, and needs are not considered in determining eligibility and they are not part of the certified group. The certified group in this case includes only [REDACTED].

To determine FIP eligibility and benefit rate, financial need must exist in order to receive FIP benefits. BEM 518 (January 2020), p. 1. It exists when the certified group passes the Qualifying Deficit Test, Issuance Deficit Test, and Child Support Income Test. *Id.*

The Qualifying Deficit Test is completed by subtracting budgetable income from the certified group's payment standard for the application month. *Id.* This reviews the first two application months in which the group could be eligible for an assistance payment. *Id.*

The Issuance Deficit Test subtracts budgetable income from the certified group's payments standard for the benefit month. *Id.* The benefit month is the month an assistance payment covers. *Id.*

In the Child Support Income Test, the FIP group's countable income plus the amount of certified support (or amount of support to be certified) must be less than the certified group's payment standard. *Id.*

The payment standard is the maximum benefit amount that can be received by the group. BEM 515 (January 2022), p. 1. The payment standard is determined by group size. BEM 515, p. 1; RFT 210 (April 2017), p. 1. The group size is one which equates

to a standard payment of \$158.00 as Petitioner is an ineligible grantee because of his receipt of SSI benefits. *Id.*

Financial need exists if there is at least a \$10 deficit after income is budgeted in the issuance deficit test and the group passes the child support income test. BEM 518, p. 2. If the group fails either test, the group is ineligible for assistance. *Id.* The only exception to the \$10 deficit applies at application when the certified group must have a deficit of at least \$1 in the qualifying deficit test to be eligible for FIP. BEM 518, p. 3. If the group fails this test, the group is denied benefits. *Id.*

Petitioner's and his wife's income are excluded from consideration as they are both SSI recipients. [REDACTED] is not part of the group and her income is also excluded. [REDACTED] does not receive any income.

Next, the Department is required to apply appropriate income deductions. At application, the Department is required to deduct \$200.00 from each person's countable earnings, and then an additional 20% of each person's remaining earnings. BEM 518 (October 2015), p. 5. [REDACTED] does not have any income therefore these deductions are inapplicable. Finally, the applicable payment standard of \$158.00 is deducted from the net earned income which results in a deficit of \$158.00. Since a deficit exists, the group is eligible for FIP benefits. However, because the Department presented conflicting information about group eligibility, the Department has not satisfied its burden of proof that it acted in accordance with policy.

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.

In this case, Petitioner disputes the Department's determination of his group size by including his daughter [REDACTED] and the denial of his FAP benefit based upon excess income.

FAP group composition is established by determining who lives together, the relationship of those living together, and whether the people living together purchase and prepare food together or separately. BEM 212 (January 2022), p. 1. Generally, parents and their children under 22 years of age who live together must be in the same group. *Id.* A person is ineligible for FAP benefits and considered a non-group member if the person is in student status and does not meet any of the exception criteria found in BEM 245. BEM 212, p. 9. For FAP cases, a person is in student status if the person is aged 18 to 49, enrolled at least half-time or more in a vocational, trade, business, or technical school requiring at least a high school diploma or equivalency certificate, or if they are participating in a regular curriculum at a college or university that offers degree

programs regardless of whether a diploma is required. BEM 245 (April 2021), pp. 3-4. To be eligible for FAP benefits, a person in student status must meet one of the following criteria:

- Receiving Family Independence Program (FIP) benefits.
- Enrolled in an institution of higher education as a result of participating in a Job Training Partnership Act (JTPA) program, program under Section 236 of the Trade Readjustment Act of 1974, another State or local government employment and training program.
- Physically or mentally unfit for employment.
- Employed for at least 20 hours per week and paid for such employment.
- Self-employed for at least 20 hours per week and earning weekly income at least equivalent to the federal minimum wage multiplied by 20 hours.
- Participating in an on-the-job training program.
- Participating in a State or Federally funded work study program during the regular school year.
- Providing more than half of the physical care of a group member under the age of six.
- Providing more than half of the physical care of a group member age six through 11 and the local office has determined adequate childcare is not available to enable the person to attend class and work at least 20 hours per week or participate in a state or federally financed work study program during the regular school year.
- A single parent enrolled full-time in an institution of higher education who care for a dependent under age 12.

BEM 245, pp. 4-5.

In this case, Petitioner listed [REDACTED] on the FAP and SER applications as being a household member and when asked if she was “[i]n the home?”, Petitioner wrote “yes” on the SER application. In addition, [REDACTED] is currently age [REDACTED] and listed her address with her employer as being the same as Petitioner. Therefore, the default rule indicates that [REDACTED] should be considered a group member because all information presented at the time of applications says that she lives in the home with Petitioner and is under age 22. The next question turns to whether [REDACTED] is considered an ineligible student. Since [REDACTED] is enrolled at [REDACTED] College part time, she is in student status. However, because [REDACTED] works at least 20 hours per week and is paid for her work as noted by the Equifax Work Number Report, she is not ineligible for benefits. Therefore, based upon all information available to the Department at the time of its decision, the Department properly included [REDACTED] in the FAP group.

Next Petitioner disputes the Department's determination that Petitioner's group exceeded the income limit.

All countable, gross earned and unearned income available to the group must be considered in determining a client's eligibility for program benefits and group composition policies specify whose income is countable. BEM 500 (July 2020), pp. 1–5. The Department determines a client's eligibility for program benefits based on the group's actual income and/or prospective income. Prospective income is income not yet received but expected. BEM 505 (November 2021), 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. 5-7. A standard monthly amount must be determined for each income source used in the budget. BEM 505, pp. 8-9. Income received bi-weekly is averaged and multiplied by 2.15 to achieve the standardized monthly income. *Id.*

Petitioner's and his wife's income is received monthly; therefore, there is no need to further standardize the income. Petitioner and his wife receive RSDI and SSI benefits and both of their payments are subject to an overpayment reduction. Per policy for both RSDI and SSI, the gross benefit is to be considered in the FAP budget minus any deductions made by an issuing agency to recover a previous overpayment or ineligible payment. BEM 503 (April 2022), pp. 29-30, 35; BEM 500 (April 2022), p. 6. Therefore, Petitioner's and his wife's budgetable RSDI and SSI benefits are \$[REDACTED], \$[REDACTED], and \$[REDACTED] respectively. There is no need to further standardize their income as it is received on a monthly basis.

In addition to the RSDI and SSI income for Petitioner and his wife, [REDACTED] earned income must also be budgeted because she was listed as a household member living in the home who is not an ineligible student. After reviewing [REDACTED] wages, the Department determined that [REDACTED] wages from August 12, 2022 were excluded from consideration as they were unusually high and instead relied exclusively on her wages from August 26, 2022, totaling \$[REDACTED]. After standardizing [REDACTED] wages ([REDACTED] multiplied by 2.15 because her income is received bi-weekly), her gross standardized monthly earned income is \$[REDACTED].

After combining each household members' standardized income, the total gross monthly income is \$[REDACTED].

After consideration of income, the Department considers all appropriate deductions and expenses. Petitioner's group includes a Senior, Disabled, or disabled Veteran (SDV) group member; therefore, the group is eligible for the following deductions to income:

- Dependent care expense.
- Excess shelter deduction.
- Court ordered child support and arrearages paid to non-household members.
- Standard deduction based on group size.

- Medical expense deduction for the SDV group member
- 20% earned income deduction

BEM 550 (January 2022), p. 1; BEM 554 (January 2022), p. 1; BEM 556 (October 2021), pp. 3-6.

As discussed above, Petitioner has standardized gross income of \$[REDACTED]. No evidence was presented that the group has a child support or dependent care expenses and the Department properly budgeted \$0.00 for these items. In addition, Petitioner has a group size of four, so he is eligible for the standard deduction of \$184.00 and that was properly budgeted. RFT 255 (October 2022), p. 1; BEM 556, p. 4. Next, Petitioner is an SDV group member but at this time, no medical expenses have been submitted to be included in his FAP budget. 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. Finally, a 20% earned income deduction is applied toward [REDACTED] income totaling \$[REDACTED].

After consideration of each of these deductions, Petitioner's Adjusted Gross Income (AGI) would be calculated by subtracting each of these expenses from the group's gross income. Therefore, the group's AGI is \$[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). Housing expenses include rent, mortgage, second mortgage, home equity loans, condo and maintenance fees, lot rent, other payments leading to the ownership of the home, property taxes, state and local assessments, and insurance on the structure of the home. BEM 554, p. 13-14. Utilities are addressed by the heat and utility standard deduction (H/U) which covers all heat and utility costs including cooling. BEM 554, p. 15. FAP groups that receive the H/U do not receive any other individual utility standard deductions including water, sewer, gas, trash, telephone, or non-heat electric. BEM 554, p. 15. Petitioner has a current property tax expense of \$149.43 per month. He is also responsible for all utility costs; therefore, the Department properly afforded Petitioner the heat and utility standard deduction (H/U). Effective October 1, 2021, the H/U was \$559.00. RFT 255, p. 1. The expenses outlined here are the only expenses considered for purposes of calculating the FAP budget and eligibility determination. Petitioner's total housing cost is \$709.00 which is reduced by 50% of

Petitioner's AGI (\$ [REDACTED]) resulting in a negative number and therefore no excess shelter cost. *Id.*

Since Petitioner has no excess shelter cost, Petitioner's AGI is his Net Income or \$ [REDACTED]. Effective October 1, 2021, the Net Income Limit for a group size of four is \$2,209.00. Since the group's Net Income is greater than the Net Income Limit, the Department properly denied Petitioner's application for FAP benefits due to exceeding the income limit. BEM 550 (January 2022), p. 1.

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 requested a hearing disputing the Department's decision to deny his SER non-heat electric application based upon income. Low-income households who meet all SER eligibility requirements may receive assistance to help with household heat and electric costs. ERM 301 (December 2021), p. 1. To be eligible, all income of all household members is considered in determining eligibility. ERM 301, p. 6. Countable income includes, but is not limited to, the net amount received of Retirement Survivors Disability Insurance (RSDI) or Supplemental Security Income (SSI) benefits, as well as earned income of all group members. ERM 206 (November 2019), p. 1. SER groups members must use their available income and cash assets to help resolve the emergency. ERM 208 (October 2021), p. 1. Groups include all adults and dependent children who normally live together that live together. ERM 201 (October 2020). Since [REDACTED] was included on the application as living in the home, she is part of the group and the group size is four. A group is eligible for energy services when the combined monthly net income that is received or expected to be received by a group is less than the standard for SER energy services based upon group size. *Id.* If income exceeds the limit, the application is denied. *Id.* Net countable income is determined by subtracting any mandatory withholding taxes, court ordered child support, payments for health insurance, and Medicare premiums that are not reimbursed. ERM 206, pp. 4-5.

Petitioner and his wife have a net RSDI and SSI income of \$ [REDACTED] per month. [REDACTED] had gross wages of \$ [REDACTED] ([REDACTED]) for August 2022. After deductions for mandatory tax withholdings (25%), and there being no evidence of deductions for health insurance, child support or items required for employment, her net income is \$ [REDACTED]. Therefore, total net household income is \$ [REDACTED]. Finally, Petitioner has a group size of four; therefore, the income net income limit applicable to Petitioner for energy services is \$ [REDACTED] per month. ERM 208, p. 6; ERM 100 (October 2021), p. 4. Petitioner's net income is greater than the energy services income limit for a group size of four and the Department properly denied Petitioner's application for SER assistance with electric.

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 denied Petitioner's applications for FAP and SER benefits but failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined FIP group eligibility.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to the denial of FAP and SER benefits and **REVERSED IN PART** with respect to the determination of FIP eligibility.

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. Redetermine group FIP eligibility effective July 16, 2022;
2. If otherwise eligible, issue supplements to Petitioner or on his 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

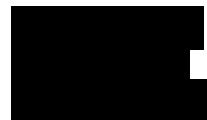
Via-Electronic Mail :

Interested Parties

MDHHS-Wayne-55-Hearings
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Petitioner

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