



GRETCHEN WHITMER
GOVERNOR

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

MARLON I. BROWN, DPA
ACTING DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: September 19, 2023
MOAHR Docket No.: 23-004241
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 September 14, 2023. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Valerie Krause, Assistance Payments Supervisor.

ISSUE

Did the Department properly exclude Petitioner's rental property roof repair from consideration in Petitioner's Food Assistance Program (FAP) benefit calculation?

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 May [REDACTED] 2023, the Department received Petitioner's change report noting a roof repair expense on her rental property, an apartment in her barn.
2. On June [REDACTED] 2023, the Department received Petitioner's second change report noting the full invoice total for the roof repair of her rental property, \$[REDACTED]
3. At some point and by an unknown method, the Department informed Petitioner that the roof repair expense would not be considered in determining her FAP budget because BEM 504 provides that expenses exceeding the gross rental income cannot be used to offset other forms of income.

4. On August ■ 2023, the Department received Petitioner's request for hearing disputing the Department's failure to consider the expense and failure to average the expense over the course of 12 months.

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 disputes the Department's failure to include her rental property roof repair expense in her FAP benefit calculation. In determining FAP benefit rates, the Department must consider earned income, including self-employment income and income from rental/room and board. BEM 500 (April 2022); BEM 502 (October 2019); BEM 504 (October 2019).

Some rental income is counted as unearned income and some as earned income or self-employment. BEM 504, p. 1. Rental income is divided into farm land rental, in-home rental (when a landlord rents part of their own dwelling to another), room and board (when the landlord provides another with both food and a place to live), and other rental income. BEM 504, pp. 1-2. Other rental income is any rental income which is not specifically categorized as farmland, in-home, or room and board rental income. BEM 504, p. 2. Petitioner has other rental income as she rents an apartment in her barn.

The Department allows for a standard percentage for expenses when calculating rental income when the landlord chooses not to report actual expenses or when the landlord does not verify expenses exceeding the standard percentage. BEM 504, p. 3. When a landlord reports actual expenses for other rental income, the Department allows expenses for repairs among other items. BEM 504, pp. 3-4. However, the Department will not deduct expenses which exceed the gross rental income from other types of income. BEM 504, p. 4. Federal regulations state that "income must be averaged over the period the income is intended to cover..." 7 CFR 273.11(a)(1)(i) Federal regulations also provide that households who "derive their self-employment income from a farming operation and who incur irregular expenses to produce such income have the option to annualize the allowable costs of producing self-employment income from farming when the self-employment farm income is annualized." 7 CFR 273.11(a)(1)(iii) Finally, the Federal regulations provide that in determining net self-employment income, any amount

that exceeds the payment a household receives from a rental is not an allowable cost of doing business. 7 CFR 273.11(b)(2)(iv)

Petitioner has rental income from a tenant in the apartment over her barn. Petitioner incurred an expense in repairing the roof over the apartment. Based on the Federal Regulations and policy, Petitioner's rental net income (income minus costs of producing the income) cannot be annualized over the year. Therefore, the costs of the repair cannot be considered over the course of the year. Furthermore, policy and Federal Regulations provide that any amount which exceeds the household income cannot be deducted. Because Petitioner's rental income must be viewed from the perspective of the monthly budget versus the annualized, the roof repair must be considered with respect to her monthly income.

Petitioner receives \$[REDACTED] per month in rental income. Verification of the repair shows that the cost of the repair was \$[REDACTED]. Since the cost of the repair exceeded Petitioner's rental income, her rental income is zeroed for the month, but cannot count against any other sources of income or in any other month. Because the Department failed to provide a Notice of Case Action for the hearing showing exactly what action it took in Petitioner's case, the Department has not met its burden of proof showing that it acted in accordance with policy in reviewing Petitioner's self-employment income expense.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when reviewing Petitioner's self-employment income expense.

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. Reprocess Petitioner's rental property roof repair expense; and,
2. Issue notice to Petitioner explaining the Department's actions.



AM/dm

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 :

DHHS
Cindy Tomczak
Berrien County DHHS
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MOAHR

Via-First Class Mail :

BSC3HearingDecisions
Petitioner

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