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GOVERNOR

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

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DIRECTOR

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Date Mailed: February 28, 2024
MOAHR Docket No.: 24-000858
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 February 22, 2024. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Shawnta Short, Assistance Payments Worker.

ISSUE

Did the Department properly determine Petitioner's Food Assistance Program (FAP) eligibility?

Did the Department properly determine Petitioner's Medical Assistance (MA) Program eligibility?

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 FAP recipient. In August and September 2023, she received \$158.00 in FAP benefits.
2. On August 7, 2023, the Department received Petitioner's completed Redetermination listing Retirement Survivors Disability Insurance (RSDI) income, a mortgage, utilities, health insurance, and Medicare premiums.

3. On December 12, 2023, the Department issued a Notice of Case Action to Petitioner advising her that for October 2023, she would receive \$120.00 in FAP benefits, and for November 2023, ongoing, she would receive \$99.00 in FAP benefits per month based upon [REDACTED] in unearned income, \$198.00 standard deduction, \$677.00 in housing costs, and \$680.00 heat and utility standard deduction (H/U) for a group size of one.
4. On December 14, 2023, the Department issued FAP benefits to Petitioner for October in the amount of \$120.00, November in the amount of \$99.00, and December in the amount of \$99.00.
5. On January 16, 2023, the Department issued a new Notice of Case Action to Petitioner advising her that her FAP benefits were calculated based upon [REDACTED] in unearned income, \$198.00 standard deduction, \$677.00 housing costs, and \$680 H/U. The Notice of Case Action also noted that Petitioner was being considered a simplified reporter with a household size of two, as opposed to a household size of one based on the previous Notice of Case Action and had a simplified reporting limit of [REDACTED]. Finally, the Notice of Case Action indicated that the Department owed Petitioner \$21.00 in FAP benefits for December 2023 but made no mention of October or November 2023.
6. On January 25, 2024, the Department received a hearing request from Petitioner disputing eligibility for Medical Assistance (MA) Program benefits in addition to her FAP benefit rate for October and November 2023.
7. A FAP EDG screenshot from Bridges shows that Petitioner's two children were previously included in the group but are not currently considered part of the certified group as of January 2024. Petitioner's daughter is listed as an ineligible student and her son is listed as an excluded adult.
8. At the hearing, Petitioner argued that her increased RSDI benefit of [REDACTED] did not start until January 1, 2024. The Department argued that her increased benefit was in fact [REDACTED] effective October 2023. The parties also disputed Petitioner's medical expenses, Petitioner arguing that she had submitted verification of expenses and the Department arguing that the only verified medical expense was submitted on October 25, 2023 for January 2023 in the amount of \$226.00 and that at least as of October 2023, Petitioner was not responsible for her Medicare Part B premium.
9. At the hearing, Petitioner requested to withdraw the MA portion of her hearing request indicating that her concerns had been resolved.

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)

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 calculation of her FAP benefit rate. Prior to redetermination, Petitioner received \$158.00 per month in FAP benefits and afterwards it was reduced to \$120 for October and \$99 for November, ongoing.

First and foremost, when determining eligibility for FAP, the Department must first determine a program participant's group size. FAP group composition is based upon who lives together, the relationships of those living together, whether they purchase and prepare food together, and finally, if there are any special living arrangements. BEM 212 (January 2022), p. 1. Petitioner credibly testified that she had requested to remove both of her children from her group. The screenshot from Bridges shows that Petitioner's son had been removed, but that her daughter was still considered a group member; however, she had been considered an ineligible student. While an ineligible student does not receive benefits, the student is still part of the group and returns to an active recipient status when no longer enrolled as a student or if other requirements are met. BEM 212, p. 9; see also BEM 245. Therefore, the Department has not shown that it has complied with policy in removing Petitioner's daughter from the group.

To determine whether the Department properly calculated Petitioner's FAP benefit rate, the evaluation first starts with consideration of all countable earned and unearned income available to the group. BEM 500 (April 2022), pp. 1-5. The Department determines a client's eligibility for program benefits based on the client's actual income and/or prospective income. Prospective income is income not yet received but expected. BEM 505 (October 2023), 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. 4-9. A standard monthly amount must be determined for each income source used in the budget. BEM 505, pp. 8-9. Because Petitioner receives RSDI, there is no need to further standardize her income as her income is already received on a monthly basis. In addition, policy provides the gross amount of the RSDI benefit is considered. BEM 503 (January 2023), p. 29. Petitioner credibly testified that her RSDI benefit for 2023 was **\$1,481.00** and that it increased effective January 1, 2024 to \$1,528.00. The Department disputed Petitioner's statement but provided no documentation to support its argument. Therefore, for purposes of this decision, **\$1,481** is used to calculate Petitioner's October and November, ongoing, FAP benefit rate.

After consideration of income, the Department considers all appropriate deductions and expenses. Petitioner is a senior, disabled, or disabled veteran. Therefore, she is eligible for the following deductions to income:

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

BEM 550 (April 2023), pp. 1; BEM 554 (April 2023), p. 1; BEM 556 (January 2023), pp. - 6.

The Department properly budgeted the standard deduction of \$198.00. RFT 255 (October 2023), p. 1; BEM 556, p. 4. No evidence was presented that Petitioner has dependent care or child support expenses.

Next, Petitioner is an SDV group member. Petitioner testified that she has medical expenses and wrote on a document submitted to the Department that the expenses were \$1,441.80 in addition to \$286.00 in prescriptions for a total of \$1,727.80. However, Petitioner was unable to identify when she submitted verification of any of these expenses. The Department credibly testified that the only medical expense verification was received on October 25, 2023 for an expense incurred on January 25, 2023 in the amount of \$226.00. Medical expenses which are overdue are not to be considered. BEM 554, p. 12. An expense is not overdue if it is currently incurred, currently billed, or the client made a payment arrangement before the bill became overdue. *Id.* Medical expenses must be verified including the amount of reimbursement. BEM 554, p. 13.

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.

Because the Department did not present the medical expense submitted in October 2023 for the hearing to determine whether it was timely or not, this decision cannot reach a conclusion and the Department has not met its burden of proof. Furthermore, if Petitioner has a verified medical expense which is not overdue, she may choose if she wants to use the SMD or if she wants to allocate the expense over a period. Finally, the parties disputed whether Petitioner received a Medicare Savings Program (MSP) benefit for October and November 2023. If Petitioner received an MSP benefit for these months, she is not eligible for a medical expense deduction based on her Medicare premiums. If

she did not receive an MSP benefit for these months, she is eligible for a medical expense deduction.

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). Petitioner is responsible for housing costs of \$677.00 per month in addition to her utility expenses. The heat and utility standard deduction (H/U) of \$680.00 covers all heat and utility costs including cooling except actual utility expenses (repairs or maintenance). BEM 554, p. 16. When a client is not responsible for heating and/or cooling costs, the client may receive utility standard deductions for non-heat electric, water and/or sewer, telephone, cooking fuel, and trash as applicable. BEM 554, p. 22-25. The Department is required to annually review these standards and make adjustments to reflect changes in costs. 7 CFR 273.9(d)(6)(iii)(B). The expenses and factors outlined here are the only expenses considered for purposes of calculating the FAP budget and determining eligibility. Because Petitioner is responsible for her heat and electric expenses, she is eligible for the H/U of \$680.00. After each item is considered, Petitioner's total housing cost is added together (\$1,357.00) and reduced by 50% of Petitioner's AGI (indeterminate because income and medical expenses are disputed) to calculate her excess shelter deduction. *Id.*

Next, if Petitioner had an excess shelter cost, it would be deducted from her AGI to equal her Net Income. *Id.* Finally, Petitioner's Net Income is compared against the Food Assistance Issuance Tables found in RFT 260 to determine the monthly FAP benefit rate. BEM 556, p. 6; RFT 260 (October 2023), p. 11.

Because the Department failed to provide verification of the RSDI benefit, the medical expense, remove Petitioner's daughter from the group, and because the Department failed to provide a clear explanation as to the change in Petitioner's FAP benefit between October and November 2023, the Department has not met its burden of proof in establishing that it has properly calculated Petitioner's FAP benefit rate.

Medical Assistance (MA) Program

MA is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

In this case, Petitioner submitted a hearing request regarding her MA eligibility. At the hearing, Petitioner requested to withdraw the MA portion of her hearing request indicating that her MA concerns had been resolved. The Department did not have any objections to the withdrawal of the request. Therefore, pursuant to the withdrawal, Petitioner's request for hearing as it relates to **MA** benefits is **DISMISSED**.

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 it calculated Petitioner's FAP benefit rate for October 2023, ongoing.

DECISION AND ORDER

Petitioner's request for hearing as it relates to **MA** benefits is **DISMISSED**.

The Department's decision as it relates to FAP 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 FAP benefit rate for October 2023, ongoing;
2. If otherwise eligible, issue FAP supplements to Petitioner for benefits not previously received; and,
3. Notify Petitioner in writing of its decision.

AMTM/cc



Amanda M. T. Marler
Administrative Law Judge

