



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

MARLON I. BROWN, DPA
DIRECTOR

[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: October 11, 2024
MOAHR Docket No.: 24-009960
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Caralyce M. Lassner

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 by telephone on October 3, 2024. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Rosemary Molsbee-Smith.

ISSUE

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

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. In July 2024, the Department closed Petitioner's FAP case. (Exhibit A, p. 73).
2. On August 2, 2024, the Department received a completed FAP and Medicaid (MA) application from Petitioner for herself and her three children, [REDACTED] (SS), [REDACTED] (KD), and [REDACTED] (SC). All three children are disabled, and Petitioner reported a child care expense of \$75 bi-weekly. (Exhibit A, pp. 14 – 27).
3. On August 5, 2024, the Department interviewed Petitioner for FAP, and Petitioner confirmed her child care expense. (Exhibit A, pp. 28 – 34).

4. On August 5, 2024, the Department sent Petitioner a Verification Checklist (VCL) that requested verification of Petitioner's child care expense, self-employment, and a copy of her federal income tax return by August 15, 2024. (Exhibit A, pp. 35 – 37).
5. On August 13, 2024, the Department received verification of Petitioner's child care expense. (Exhibit A, p. 1).
6. On August 17, 2024, the Department sent Petitioner a Notice of Case Action (NOCA) that approved Petitioner for FAP benefits of \$259 per month for a four-person FAP group, effective September 1, 2024. The budget summary included with the NOCA did not include a deduction for child care. (Exhibit A, pp. 49 – 51).
7. On August 27, 2024, the Department received a request for hearing from Petitioner that disputed the amount of her monthly FAP benefit. (Exhibit A, pp. 4 – 5).
8. On September 10, 2024, the Department determined that it did not budget Petitioner's child care expense correctly. (Exhibit A, pp. 60 – 61).
9. On September 10, 2024, the Department sent Petitioner a NOCA that approved Petitioner for FAP benefits of \$374 per month for her four-person FAP group, effective October 1, 2024, and notified Petitioner that an additional \$113 in FAP would be issued to her as a supplement for September 2024. (Exhibit A, pp. 64 – 66).

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.

Petitioner requested a hearing to dispute her monthly FAP benefits. Petitioner applied for FAP on August 2, 2024 and was approved for \$259 per month for a four-person FAP group, effective September 1, 2024. Initially the Department did not budget Petitioner's verified child care expense, and prior to the hearing it corrected its error, increased Petitioner's FAP benefits to \$374 per month, effective October 1, 2024, and issued her a supplement for September 2024.

To determine whether the Department properly calculated Petitioner's income for purposes of FAP, all countable earned and unearned income available to the Petitioner must be included. 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. BEM 505 (October 2023), p. 1. Wages from self-employment are earned income. BEM 501 (January 2024), pp. 6 – 7. For purposes of FAP, the Department must count the gross amount of child support and SSI income as unearned income. BEM 503 (April 2024), pp. 6 – 9, 35 – 37. Generally, when child support is received irregularly, the Department must average the amount received in the past three calendar months to determine the monthly budgetable amount. BEM 505, pp. 4 – 5.

In this case, the Department testified that beginning in September 2024, it budgeted Petitioner's income as a) countable self-employment income of \$191 per month, and b) total unearned income of \$2,930 per month from her children's SSI and child support. (Exhibit A, p. 57). During the hearing, Petitioner did not dispute the amount of her countable self-employment income, and the parties agreed that Petitioner received SSI of \$943 per month for SS, \$943 for month for KD, and, beginning in September 2024, \$906 per month for SC, for a total of \$2,792. The Department testified that the difference between the total unearned income and the total SSI income was Petitioner's child support income. However, the Department did not clearly explain how it determined the amount of child support it budgeted, and the evidence did not reflect budgetable child support income of \$138 per month, the amount of total unearned income minus the children's SSI income. (Exhibit A, pp. 38 – 40, 57). Therefore, the Department failed to satisfy its burden that it acted in accordance with policy when it determined Petitioner's income for the benefit period beginning September 1, 2024.

Because each of Petitioner's children are disabled, Petitioner's FAP group is considered a senior/disabled/veteran (SDV) household. BEM 550, p. 1. Households with SDV members and earned and unearned income may be eligible for certain deductions including dependent care expenses and an excess shelter deduction, among others. BEM 554 (January 2024) p. 1; BEM 556 (January 2023) pp. 3 – 6.

Here, Petitioner timely provided verification of her \$150 per month dependent care expenses. (Exhibit A, p. 1). However, the Department initially only deducted \$100 per month for that expense when it determined Petitioner's FAP benefits effective September 1, 2024. (Exhibit A, pp. 49 – 51, 57). During the hearing, the Department acknowledged that the initial approval of Petitioner's FAP benefits did not account for her correct child care expense and explained that the issue was corrected on September 10, 2024 and it issued a new NOCA that increased Petitioner's FAP benefits to \$374 per month for her four-person FAP group, effective October 1, 2024, and notified Petitioner that an additional \$113 in FAP would be issued to her as a supplement for September 2024. (Exhibit A, pp. 64 – 66).

During the hearing, Petitioner also expressed a concern with the deduction amount for her shelter expense. For SDV groups, such as Petitioner's, the excess shelter

deduction is the amount of a client's allowable housing and utility expenses minus 50% of the client's adjusted gross income (AGI). BEM 554, p. 1; BEM 556, pp. 10 – 11. The AGI is determined by subtracting the earned income deduction, standard deduction, dependent care expenses, medical expenses for SDV members, and court ordered child support payments made by a member of the group from the countable income.

In this case, Petitioner reported a housing expense of \$1,375 per month and that she pays for heat and other utilities. (Exhibit A, pp. 27, 32 – 33). When a FAP group has heating and other utility expenses, separate from the mortgage payment, it is entitled to a heat and utility (h/u) standard amount to be included in the calculation of the excess shelter deduction, which is the highest amount available to FAP groups who pay utilities. BEM 554, p. 17. Until September 30, 2024, the h/u standard amount was \$680.00. RFT 255 (October 2023). Therefore, the Department properly budgeted Petitioner's housing expense and used the h/u standard amount to determine Petitioner's total housing and utility expenses were \$2,055. (Exhibit A, pp. 59, 63). However, because the Department did not establish that it properly determined Petitioner's income for the benefit period beginning September 1, 2024, it did not satisfy its burden that it acted in accordance with Department policy when it determined 50% of Petitioner's AGI, which was necessary to complete its calculation of Petitioner's excess shelter deduction.

When a client applies for FAP, timely provides all required verifications, and is eligible and approved, benefits are prorated from the date of application. BAM 115 (May 2024), pp. 26, 28. During the hearing, the parties agreed that the Department issued Petitioner \$652 in FAP benefits for the period of August 2, 2024 through August 31, 2024. However, the Department offered no evidence of how Petitioner's prorated FAP benefits were determined or whether it included the correct deduction of \$150 per month for Petitioner's child care expense for the period of August 2, 2024 through August 31, 2024. Therefore, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined Petitioner's FAP benefit amount for the period of August 2, 2024 through August 31, 2024.

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 determined Petitioner's FAP benefit amount effective August 2, 2024 ongoing.

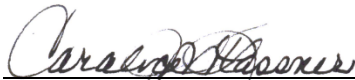
DECISION AND ORDER

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. Redetermine Petitioner's eligibility for FAP benefits for the period of August 2, 2024 ongoing;
2. If Petitioner is eligible for any supplemental FAP benefits, issue supplemental payments to Petitioner for any FAP benefits she was eligible to receive but did not for August 2, 2024 ongoing; and
3. Notify Petitioner of its decision in writing.

CML/nr



Caralyce M. Lassner
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

Yvonne Hill

Oakland County DHHS Madison Heights Dist.

30755 Montpelier Drive

Madison Heights, MI 48071

MDHHS-Oakland-DistrictII-Hearings@michigan.gov

Interested Parties

BSC4

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MOAHR

Via-First Class Mail :

Petitioner

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